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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
Tuesday, August 15, 2023
Jefferson City, Missouri

Volume X

In the Matter of:
Confluence Rivers Utility)
Operating Company, Inc.'s) File No.: WR-2023-0006
Request for Authority to)
Implement a General Rate)
Increase for Water Service)
and Sewer Service Provided)
in Missouri Service Areas)

CHARLES HATCHER, Presiding
SENIOR REGULATORY LAW JUDGE

SCOTT T. RUPP, Chairman
KAYLA HAHN, Commissioner
JASON R. HOLSMAN, Commissioner
GLEN KOLKMEYER, Commissioner

Stenographically Reported By:
Shelley Bartels, RPR, CCR

Job No.: 149064

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1 (On the record at 9:27 a.m.)

2 JUDGE HATCHER: Let's go on the record.
3 I apologize for the late start. I'll announce again
4 and state for the record, we had a significant
5 traffic event in the highways leading into Jefferson
6 City which caused a number of necessary persons to be
7 delayed. We are beginning now.

8 This is the Confluence general rate case.
9 This is file number WR-2023-0006. My name is Charles
10 Hatcher. I'm the regulatory law judge presiding over
11 this hearing. With me today is Commissioner Glen
12 Kolkmeier. On Webex is Commissioner Jason Holsman.
13 Stuck in traffic is Chair Scott Rupp. And also
14 Commissioner Coleman is out sick today. She had her
15 knee surgery and is still in the hospital
16 recovering, so please keep her in our thoughts. I
17 know she'll be listening to this recording later.

18 Let's see. The other -- I have two other
19 announcements. The -- the gallon estimate, the water
20 gallon estimates, the 5000 versus the 2750, that
21 issue will be raised after 12:30 to allow for
22 Confluence witness Lyons. And I would prefer that we
23 just keep that whole issue and all of its witnesses
24 in one bundle. So whatever time we do decide on, I
25 know that that's his first availability, so we

1 don't have to be at 12:30, but I would assume at
2 about 10:30, quarter to 11:00 when we take our first
3 break, that that might be discussed.

4 And we are on the issue of cost of
5 capital, and we will have mini opening statements.
6 And we'll begin with Confluence Rivers.

7 Oh, yes, you're right, you're right. Let
8 me back up. We have one bit of business. We had
9 talked about advanced metering infrastructure, the
10 issue yesterday, that the parties had waived their
11 cross-examination and that would be pending the
12 commissioners waiving their cross. The presiding
13 officer belatedly, and again, issues his apologies,
14 sent the question in writing by email to the parties
15 which essentially was, Were the AMI meters installed
16 before over or acquisition. I don't recall the two
17 systems. I believe the parties have come to an
18 agreement. Mr. Woodsmall.

19 MR. WOODSMALL: Thank you, your Honor.
20 The two systems were Hillcrest and Indian Hills --
21 excuse me -- and those were installed after
22 acquisition. I talked to Staff and OPC. I think
23 they're in agreement, so I think that finalizes that
24 issue for you.

25 JUDGE HATCHER: I am going to ask for

1 objections because I'm going to have trouble citing
2 this if this needs to be in the decision. So I'm
3 going to call this an oral joint stipulation of facts
4 and it has been taken down as such. Are there any
5 objections to the Commission treating Mr. Woodsmall's
6 prior statement as a joint stipulation of fact given
7 orally at the proceeding?

8 MR. CLIZER: No, your Honor.

9 JUDGE HATCHER: Thank you, Mr. Woodsmall.

10 MR. WOODSMALL: Thank you, sir.

11 JUDGE HATCHER: Mini opening statements.

12 Mr. Cooper, thank you.

13 MR. COOPER: Thank you, Judge. I'm going
14 to adjust the microphone here just for a second.
15 Perfect.

16 May it please the Commission. In the
17 Bluefield case which you've seen referenced in
18 testimony, United States Supreme Court summarized
19 your duty as to this issue as follows: What annual
20 rate will constitute just compensation depends upon
21 many circumstances and must be determined by the
22 exercise of a fair and enlightening judgment having
23 regard to all relevant facts.

24 Confluence Rivers, Staff, and OPC have
25 all provided the Commission with the testimony of

1 experienced witnesses as to cost of capital. These
2 testimonies concern a number of calculations and
3 interpretations of data for you to consider. But as
4 you examine these calculations and interpretations
5 for the purpose of exercising your fair and
6 enlightening judgment or common sense, please keep in
7 mind the nature of the Company's business, to take on
8 small distressed systems and bring those systems into
9 regulatory compliance; the practical limitations on
10 rates as the Company adds systems; the risk involved
11 in the water industry and sewer industries generally;
12 and the Company's fundamental lack of size.

13 As to return on common equity, the
14 Company believes the appropriate return for a company
15 the size of Confluence Rivers with the business risk
16 associated with acquiring distressed systems and
17 incurring net operating losses is 11.35 percent as
18 explained in the testimony of Mr. D'Ascendis. To
19 arrive at this Mr. D'Ascendis starts with a range
20 of 10.36 to 10 point -- excuse me -- 10.36 to 11.36
21 percent before making a positive adjustment for
22 business risk and a negative financial risk
23 adjustment associated with the capital structure.

24 Staff and OPC spend a fair amount of time
25 to try and convince you that Confluence Rivers with

1 its fewer than 10,000 connections spread between
2 approximately 70 water and sewer systems is only
3 worthy of a much lower ROE.

4 Mr. Murray describes a fair and
5 reasonable allowed ROE range from 9.25 percent to 9.9
6 percent. However, he instead then identifies his 9.0
7 percent recommendation from the MAWC rate case,
8 WR-2022-0303, a case where no ROE was ultimately
9 decided, and adds a 65 basis points company-specific
10 premium to arrive at a recommendation of 9.65.

11 Mr. Walters identifies a current fair
12 market range for Confluence Rivers in the 9.2 percent
13 to 9.8 percent range and uses its midpoint of 9.5
14 percent as his recommendation. Interestingly,
15 this is -- that is a lower ROE recommendation than
16 the 9.73 percent that Staff suggested for MAWC in the
17 rate case referenced by Mr. Murray.

18 Mr. Murray defended his ROE
19 recommendation in this case in part by pointing out
20 that it's very near the 9.61 average of ROEs granted
21 for water utilities around the country in 2022.
22 Staff's recommended ROE is less than that average.

23 Fundamentally as stated previously,
24 Confluence Rivers is not an average water utility or
25 sewer utility and does not have average business risk

1 given its size and the nature of its business.
2 Common sense would indicate it is not deserving of an
3 average or below average industry ROE but
4 consideration of the ROE that is recommended by
5 Mr. D'Ascendis.

6 The appropriate capital structure
7 consists of 68.56 percent common equity and 31.44
8 percent long-term debt. This capital structure
9 reflects the actual debt issuance authorized by the
10 Commission in December of 2022. Confluence Rivers'
11 current rates do not provide for the free cash flow
12 needed for it to pay operating expenses and to cover
13 the interest costs on any additional debt. In fact,
14 Confluence Rivers is currently making no principal
15 payments on the existing debt through agreement with
16 CoBank pending outcome of this case. In the event
17 that additional cash flow is generated in the future,
18 Confluence Rivers will seek to issue additional debt,
19 but today is not that day. Or that day is not today.
20 It was certainly not the case at the time of the
21 update period in January of this year.

22 Both Staff and OPC seek to utilize
23 hypothetical capital structures. Staff with 50
24 percent equity, 50 percent debt and OPC with 45
25 percent equity and 55 percent debt.

1 OPC picks its hypothetical capital
2 structure because that is the minimum equity that
3 Confluence Rivers could have under its existing debt
4 covenants with CoBank. Beyond the fact that it is
5 not capital -- or Confluence Rivers' capital
6 structure, it was pointed out that setting the
7 capital structure at the bare minimum leaves no room
8 for the situation where Confluence Rivers has
9 purchased a small, distressed system and will
10 necessarily have to operate it at a loss until the
11 Company comes back for a rate case, which would pull
12 the equity percent below 45 percent.

13 This is, of course, a situation that
14 already confronts us. As you're probably aware, and
15 I just mention the update period ended in Jan -- on
16 January 31 of 2023. Since that time Confluence
17 Rivers has closed on four systems, two water systems
18 and two sewer systems that will not be included in
19 the rates to be set in this case. Other transactions
20 have Commission approval and may be closed in the
21 not-too-distant future and still other applications
22 are pending. Losses on acquired systems on an
23 ongoing basis is not a hypothetical situation.

24 The final cost of capital issue is the
25 cost of debt to use in the calculation of the rate of

1 return. Confluence Rivers appropriate cost of debt
2 is 6.60 percent which reflects the debt cost from the
3 debt issuance approved by the Commission. The only
4 issue here is how to treat an aspect of CoBank
5 membership related to what is called a patronage
6 credit. While it is apparently a common factor in
7 CoBank loans, it is not guaranteed generally and is
8 not required by the loan agreement. Additionally,
9 Confluence Rivers has no significant experience with
10 it given its loan has been in place for less than a
11 year. Thus, we believe the interest rate of the loan
12 itself is the appropriate cost of debt to use.

13 Now, having said this, it was suggested
14 by the OPC witness that an alternative to reducing
15 the debt cost for purposes of the rate of return
16 would be to compare any patronage credits actually
17 received by the Company -- excuse me -- to capture
18 any patronage credits actually received by the
19 Company on a going-forward basis a regulatory
20 liability account for treatment in the next rate
21 case. The Company believes that approach would be an
22 acceptable treatment of this issue. That's all I
23 have.

24 JUDGE HATCHER: Thank you, Mr. Cooper.
25 Are there any commissioner questions? Seeing none,

1 thank you, sir.

2 We'll move to Mr. Thompson with Staff.

3 MR. THOMPSON: Thank you, Judge.

4 COMMISSIONER HOLSMAN: Judge, I got a
5 question. I couldn't get off mute fast enough.

6 JUDGE HATCHER: Oh, sorry. Commissioner
7 Holsman, go ahead.

8 COMMISSIONER HOLSMAN: Yes, thank you.
9 Thank you. In the openings we heard that the
10 national average rate of reasonableness would be the
11 higher end of 10.5. Do you agree that that is an
12 appropriate marker to set a national average rate of
13 reasonableness would set at that high point at 10.5?
14 Do you agree with that?

15 MR. COOPER: Well, I'm struggling a
16 little bit because I don't remember specifically what
17 was said, Commissioner, but I think you may be
18 referring to something that's sometimes called the
19 zone of reasonableness. If so --

20 COMMISSIONER HOLSMAN: Yeah, that's it.
21 Rate of -- zone of reasonableness, yes, that's what
22 I'm referring to.

23 MR. COOPER: First off, I don't know that
24 that's a hard and fast rule. That's an approach that
25 the Commission has taken at times in the past and

1 essentially go the hundred basis points up and down
2 from an average ROE. So I think if you consider
3 the 9.6 to be an average for 2022 and you do that,
4 then it ends up being about, you know, 8.6 on one end
5 and 10.6 on the other. Again, I don't believe that
6 you're bound by that, but I think that would be the
7 range that would be referred to in that concept.

8 COMMISSIONER HOLSMAN: No, I'm not
9 suggesting that we're bound by it. But I'm asking if
10 you believe that that is a reasonable and accurate
11 reflection of what the national average sought.

12 MR. COOPER: Well, certainly the midpoint
13 of that range represents an average, yes.

14 COMMISSIONER HOLSMAN: Okay. Thank you,
15 Judge. That's all the questions I have.

16 JUDGE HATCHER: Thank you, Commissioner
17 Holsman. Commissioner Hahn.

18 COMMISSIONER HAHN: Just one more
19 question. I may need to ask your witness about this
20 instead, but I'll give it -- give it your best.
21 Given that Confluence operates in other states, what
22 are the other ROEs authorized in other states that
23 Confluence operates in, specifically Texas,
24 Louisiana, those have been mentioned before as --

25 MR. COOPER: Sure. I do not know as you

1 guessed what those other state ROEs are. One or the
2 other of my witnesses I think would be appropriate
3 for that question. I would -- and it's probably just
4 I guess the lawyer in me -- of course Confluence is a
5 Missouri-specific entity and, but it does, as you
6 indicate, have affiliates that operate in those other
7 states.

8 COMMISSIONER HAHN: Thank you.

9 JUDGE HATCHER: Thank you, Mr. Cooper.
10 And we'll go to Mr. Thompson for his mini opening on
11 cost of capital.

12 MR. THOMPSON: Thank you, Judge.

13 May it please the Commission. Cost of
14 capital is generally one of the largest issues in a
15 rate case in terms of its value and is also generally
16 one of the most hotly contested.

17 In this case from Staff's point of view,
18 this issue is worth \$376,786. For the Public Counsel
19 it's worth \$435,392. So it's a big issue in terms of
20 money. And let me just remind you that this is where
21 I indicated a couple days ago that if you wanted to
22 give this company some sort of reward, some sort of
23 incentive for its business model of buying and
24 rescuing distressed systems, then cost of capital is
25 the place where you can readily do that by giving

1 them some sort of adder to the return on equity that
2 you select. Now, Staff is not recommending that you
3 do that because the Company is purchasing systems at
4 a rapid rate without that incentive today, so Staff
5 doesn't see any need for that incentive. But I just
6 simply mention that if you want to do that sort of
7 thing, this is where you can do it rather than by
8 letting them collect income tax from ratepayers that
9 they're never going to pay to any taxing authority.

10 So going back to cost of capital, Staff
11 wants this company to have every cent that it needs
12 to operate. And that would mean that the ratepayers
13 reimburse the Company for all the costs of service,
14 which would include the cost of capital. We don't
15 want them to collect a penny more. We don't want
16 them to basically hold the ratepayers upside down and
17 shake them until everything is falling out of their
18 pockets. That's not the way this is supposed to
19 work.

20 So you have, as Mr. Cooper told you, you
21 have three very well-qualified experts that are going
22 to appear and testify to you this morning, one of
23 them by Webex and the other two physically here in
24 the room. They are going to share with you the
25 benefit of their knowledge and experience with

1 respect to the three issues that we're always
2 fighting about in cost of capital which are the
3 capital structure, the cost of debt, and the return
4 on common equity. Those three issues are the ones
5 that come up in every case.

6 So I want to talk about some other
7 numbers. Mr. Cooper has gone over the numbers for
8 those three things and has told you what each side
9 suggests or recommends. What I want to talk about
10 are these three things, which I would call the key,
11 the key to the ROE testimony: Namely growth rates,
12 market risk premiums, and equity risk premiums.

13 All three of these experts use the same
14 analytical methods, the same analytical techniques,
15 but their inputs are different. That's how they get
16 different results. Because they're using different
17 inputs. And I urge you to look carefully and compare
18 the numbers you will see in all three testimonies for
19 the growth rates, the market risk premium, and the
20 equity risk premium.

21 One of the methods they all use is the
22 discounted cash flow method in which the current
23 dividends divided by the stock price are added to a
24 growth rate in the -- in the single stage or constant
25 growth form in order to give us the number that's

1 supposed to go out to perpetuity. The growth rate is
2 supposed to go to perpetuity. Two of these experts
3 will tell you based on the financial literature that
4 it cannot be more than GDP. It cannot be more than
5 the growth rate applicable to the economy as a whole.
6 Remember, perpetuity means forever. This company may
7 be growing like Topsy right now but it cannot grow
8 like that forever. So in the single stage or
9 constant growth model of the discounted cash flow,
10 that growth rate cannot conceptually be higher than
11 the GDP growth rate, that is, the growth rate of the
12 economy as a whole.

13 Secondly, let's look at the equity -- at
14 the risk premium method and the CAPM, the capital
15 asset pricing method. Those are similar in that they
16 take a risk-free rate and they add something to it to
17 reflect the greater risk applicable to the security
18 under analysis, under review. In the risk premium
19 you take the risk-free rate and you add to that
20 what's called an equity risk premium to get your
21 result.

22 What is that equity risk premium. It's
23 supposed to quantify the degree of extra risk between
24 the risk-free security, which is usually some sort of
25 federal bond, and the security that's under review in

1 the case, right. How much more risky is it. How
2 much more of a reward should those investors get for
3 putting their money in this more risky security,
4 right. That's the equity risk premium. And it's
5 usually calculated by comparing the risk-free rate to
6 like the S&P 500 for example, right.

7 In the CAPM you do basically the same
8 thing, but you throw in an additional adjustment
9 which is called beta. Beta is supposed to quantify
10 the degree to which the Company under analysis is
11 more or less risky than the market as a whole, okay.

12 So you have the risk-free rate and to
13 that you add the market risk premium which is
14 multiplied by beta, which makes it a little bigger or
15 a little smaller, right, because the company you're
16 reviewing is either a little more risky than the
17 market as a whole or a little less risky than the
18 market as a whole.

19 So I urge you to look at these three
20 numbers because our witness will tell you and I think
21 Mr. Murray will tell you this as well, that the
22 numbers Mr. D'Ascendis has used are frankly way too
23 high. How do you get higher results. You use higher
24 inputs. What is the input that you can make higher.
25 Well, it's the growth rate, it's the equity risk

1 premium, it's the market risk premium. If those are
2 inflated, then the result is going to be inflated.
3 It's as simple as that.

4 Thank you very much. Any questions?

5 JUDGE HATCHER: Any commissioner
6 questions for Mr. Thompson? Hearing none, thank you.
7 Mr. Clizer.

8 MR. CLIZER: Good morning. If it would
9 please the Commission.

10 I'm going to bifurcate my opening today
11 into two parts. First I'm going to talk directly
12 about the issues involved in determining a proper
13 rate of return and then I'm going to talk very
14 briefly on how those issues should be viewed in light
15 of a bigger picture.

16 So let's talk rate of return. There are
17 three issues at hand here and I'm going to walk
18 through each one of those. Those issues are capital
19 structure, cost of debt, return on equity. Let's do
20 each of them.

21 Let's starts with capital structure. At
22 a high level, capital structure is fairly simple.
23 It's the ratio of debt financing to equity financing.
24 On its face, a relatively simple issue. The problem
25 is that capital structure can be manipulated by a

1 company if they want to boost their returns.

2 In its earliest rate cases Confluence
3 Rivers was okay with an 80 percent debt ratio.
4 Eighty percent. That's very, very high. That
5 means 80 percent of its financing was financed
6 through debt. Why was that. Why was Confluence okay
7 with that. Because at that time Confluence was
8 receiving through debt a 14 percent interest rate and
9 the Commission was allowing that into rates. Now,
10 that 14 percent was a result of a loan that the
11 Company effectively made with itself. And the OPC
12 fought that issue. We fought that debt rate very
13 hard over several cases. And eventually the OPC was
14 able to convince the Commission that that was an
15 illegitimate deal and the Commission consequently
16 ordered a hypothetical debt rate of 6.75 percent and
17 a 50/50 capital structure.

18 So what happened next. Well, Confluence
19 continued to argue the issue until we got to the Elm
20 Hills case. We settled. And part of our settlement
21 is we asked the Company, go to CoBank and see if you
22 can get a loan. And the Company went to CoBank and
23 they got a loan at 6.6 percent for \$7 million.

24 Now, let's just take a moment to note how
25 close you guys had gotten to getting that

1 hypothetical debt rate right on. You had debt --
2 ordered a hypothetical debt rate of 6.75. They were
3 able to get a loan at 6.6. So congratulations. You
4 guys nailed it.

5 Great. So we're making progress. We
6 have a loan. Thanks to the OPC and CoBank the
7 Company now has a reasonable cost of debt sort of.
8 I'll come back to that.

9 But first we need to talk about the
10 amount of debt. You see, now that the Company has a
11 much lower cost of debt and much more reasonable cost
12 of debt, they no longer want as high a debt ratio.
13 This is because they're no longer paying debt to
14 themselves; they're now having to pay it to a bank.
15 So now the Company wants to under-leverage. It wants
16 to have as low of debt as possible and increase its
17 equity so it can end up boosting its returns and
18 ultimately the money paid to shareholders.

19 So how do they do that. So see, we
20 got 180 degrees. When the cost of the debt was
21 really high, we want a big amount of debt. When the
22 cost of debt is really low, we want very little debt.
23 So how do we accomplish this. How did the Company do
24 this. Well, it's pretty simple. They just didn't
25 borrow as much as CoBank would have allowed them to

1 borrow. They didn't borrow up to their limit. In
2 other words, they could have had a much higher cost
3 of debt, but chose, deliberately chose not to.

4 There is only one true market-tested
5 company-specific capital structure in this case and
6 that is the one identified in CoBank's financial
7 covenants. And those covenants allow a debt ratio up
8 to 55 percent. That is what the Commission set
9 Confluence's capital structure using. This is not a
10 recommendation by some witness who has a vested
11 interest in this case. That is the capital structure
12 that a totally independent bank said, We think this
13 is what you guys could fund yourself up to and stay
14 financially stable and viable.

15 And by the way, this is not new to our
16 state. Summit Natural Gas is a also small system
17 that operates in the state. They also got a loan
18 through CoBank. Their loan had a debt limit up to 50
19 percent and Summit Natural Gas borrowed directly up
20 to that limit.

21 Now, Confluence claims it needs the
22 cushion to allow future acquisitions, but that just
23 means the Company is asking its current ratepayers to
24 pay for future business expansion. This company
25 should -- this Commission should not burden its

1 current ratepayers with costly capital structure to
2 pay for future expansion. Ratepayers should pay for
3 their own cost of service. It's as simple as that.

4 So there's no good reason the Company
5 couldn't have borrowed up to the 55 percent cost of
6 debt. The only reason they didn't was to inflate
7 their equity and boost their returns. This
8 Commission should not allow the Company to
9 artificially increase returns for its investors by
10 choosing not to employ the amount of debt they could
11 have in their loan agreements. Instead, the
12 Commission should do as it did in the Indian Hills
13 case and order a hypothetical capital structure based
14 on what the Company could actually procure.

15 This company has proven in the past,
16 proven, that it will not manage to the lowest cost of
17 capital unless the Commission orders it to. In
18 simple terms, they are leaving money on the table and
19 it's up to you to protect customers from this
20 behavior.

21 Let's turn to the actual cost of debt.
22 Again, this is generally supposed to be a very simple
23 issue. Cost of debt effectively is the cost of net
24 payments to Confluence -- sorry -- to CoBank versus
25 net payments from CoBank. And the only question

1 before the Commission is whether it should factor in
2 a known and measurable credit being used -- being
3 provided to Confluence from CoBank. And that
4 patronage credit which was mentioned by Mr. Cooper in
5 his opening, reduces the cost of debt from 6.6
6 percent to 6.23 percent. Not reflecting this credit
7 means that you are providing the company more money
8 than it needs to service its debt agreement.

9 I move now to return on equity. This is
10 easily the most complex issue in the case, but it
11 doesn't need to be. At the end of the day return on
12 equity should reflect how risky a company is. So
13 let's take a look at how Confluence's legacy systems
14 have performed after being rehabilitated and going
15 through a rate case.

16 Hillcrest was the first to go through a
17 rate case. Based on Mr. Murray's analysis of Staff's
18 EMS run in this case, the Company earned a 34.26 ROE
19 for that system. And that's return on equity, not a
20 rate of return. Again, based on Staff's EMS run in
21 this case, the Company earned a 34.26 percent ROE on
22 Hillcrest.

23 Raccoon Creek, the second case, resulted
24 in a 35.09 ROE based on the test year in that case.
25 Sorry, in this case. And for Indian Hills the ROE

1 was 12.79 percent. Now recall, that was the one
2 where the Commission finally ordered a hypothetical
3 cost of debt.

4 So what does this show. Well, what it
5 shows is that the Confluence's systems are performing
6 extremely well every time that Confluence has a --
7 sorry -- the Commission has approved a rate case.
8 The systems are able to generate strong and steady
9 cash flow. And Mr. Murray has determined that these
10 com -- these cash flows are consistent with
11 investment-grade credit risk profiles equivalent to
12 and sometimes better than Missouri's current large
13 utilities. Consequently, the Commission should set
14 rates consistent with those major utilities.

15 And let's be clear here. The OPC is not
16 saying that Confluence deserves a low ROE. On the
17 contrary, we are actually higher than Commission
18 Staff as you already heard test -- not testified, but
19 stated. This is an immanently reasonable position,
20 and it's heavily supported by the testimony of OPC
21 witness, Mr. Murray.

22 Mr. Murray is the only witness in this
23 case to have filed testimony that discusses the
24 credit metrics of Confluence's legacy systems. He's
25 the only one who took the time to dive into the

1 Company's dealings with CoBank and the Company's
2 internal communication that impact its financial
3 decisions. And Mr. Murray's the only rate of return
4 witness who has been involved with Confluence's
5 legacy systems since the Company first set foot in
6 this state. He can answer any question you might
7 have about the Company and its financial strategies.

8 As one last thing on return on equity, I
9 would like to address the excellent question posed by
10 Commissioner Hahn earlier to Mr. Cooper on behalf of
11 Confluence Rivers. You had asked what, if I recall
12 correctly, what other ROEs have been awarded for
13 their systems. The Company's last authorized ROE was
14 for Louisiana, and Louisiana awarded them a 9.5
15 percent ROE which is exactly consistent with what
16 Staff has recommended. Now, I will fully disclose, I
17 will let everything out there, because we know of
18 two. The other one was awarded in 2020, so three
19 years ago, and that was for Kentucky. And that was
20 a 9.9 percent. That's 25 basis points higher than
21 ours I'll admit, but it's also three years old.

22 So that I think covers the basics of this
23 argument, but just for a moment I want to talk about
24 the big picture. Much of the discussion that has
25 occurred during this case has centered on the idea

1 that we need to incentivize Confluence to acquire
2 more systems in this state. That's demonstrably not
3 true. Twice now this Company has not been awarded an
4 acquisition incentive for acquiring systems, but they
5 continue to acquire systems rapidly in this state as
6 their own counsel identified in opening. They have
7 continued to aggressively purchase systems.

8 And to be fair, there's been much talk
9 about the OPC or potentially even Staff opposing
10 this. The OPC hasn't litigated an acquisition since,
11 to my knowledge, 2020. I don't think since the last
12 three years we challenged a single one of their
13 acquisitions to any real degree. So in reality this
14 state has proven to be extremely friendly to this
15 company.

16 And Confluence's prior legacy systems,
17 Hillcrest, Raccoon Creek, Indian Hills have been able
18 to achieve significant profits when considered on
19 their own merits. In fact, the profits being
20 generated by those legacy systems are what was able
21 to fuel and effectively subsidize the Company's
22 expansion into other states. And if you want to have
23 any understanding of that, you just need to pose your
24 question to Mr. Murray. He explains all this in
25 testimony and he'd be happy to explain on the stand

1 exactly how Confluence is using its existing legacy
2 systems to subsidize expansions in other states.

3 In this case OPC and Staff are being
4 extremely reasonable. The OPC is asking for capital
5 structure that is exactly consistent with
6 Confluence's existing loan agreement. The OPC is
7 asking for an ROE that is above the recommendation
8 for Missouri-American Water, above Staff's
9 recommendation, and consistent with current national
10 averages. We asking for what is just and reasonable,
11 nothing more and nothing less. All we're asking for
12 is Confluence customers to pay a fair share. This
13 should not be about boosting our return to
14 incentivize the Company's continued expansion. It's
15 just asking about setting rates that are just and
16 reasonable based on the cost to serve the Company's
17 current Missouri customers.

18 Thank you. And I will answer any
19 questions you might have.

20 JUDGE HATCHER: Are there any questions
21 for Mr. Clizer?

22 COMMISSION HOLSMAN: Judge, can you hear
23 me?

24 JUDGE HATCHER: Yes. Go ahead,
25 Commissioner Holsman.

1 COMMISSIONER HOLSMAN: Yes, just a couple
2 brief ones. Thank you, Mr. Clizer. Do you happen to
3 know offhand what -- how Kentucky and I believe it
4 was -- was it Louisiana -- who were the two states
5 that you cited? Kentucky and who's the other one?

6 MR. CLIZER: I'm sorry, sir, for some
7 reason you dipped out on me for just a second.

8 JUDGE HATCHER: Yes, Louisiana.

9 MR. CLIZER: No, what was the question?

10 JUDGE HATCHER: What were the two states.

11 COMMISSIONER HOLSMAN: Okay.

12 JUDGE HATCHER: Kentucky and Louisiana.

13 MR. CLIZER: Oh, yes. It was Kentucky
14 and Louisiana. Yes, the judge is correct.

15 COMMISSIONER HOLSMAN: Okay. Do you
16 happen to recall how those two states treated their
17 tax -- the tax situation?

18 MR. CLIZER: I do not personally know
19 that. If you would like that, I can attempt to
20 determine that and have that provided to the
21 Commission in some manner. But off the top of my
22 head, I'm afraid I do not personally know that
23 information. Would you --

24 COMMISSIONER HOLSMAN: Okay. Yeah, I
25 would --

1 MR. CLIZER: -- like --

2 COMMISSIONER HOLSMAN: Yeah. I would
3 just like to see -- I mean, you know, I think it's
4 a -- I think it's a healthy exercise to look at what
5 other states doing. We are not -- we are not bound
6 of course by other states' actions, but when you're,
7 you know, kind of comparing when this business model
8 is being applied in other states, I think it's fair
9 to see how other states' commissions have treated
10 them. So when we're talking about, you know, these
11 separate issues, but they do interplay with each
12 other, if Staff is suggesting that ROE is a better
13 place to incentivize, I would like to see what
14 Kentucky and Louisiana did with the tax issue to kind
15 of do an equal comparison. So that would be the a
16 question.

17 And then I'm curious, I believe you were
18 the one who brought up the zone of reasonableness on
19 national average. Is that correct? In your opening.

20 MR. CLIZER: That was my general opening,
21 yes. Yes, sir.

22 COMMISSIONER HOLSMAN: Do you -- do you
23 stand by that 10.5 -- was it 10.5 or 10.6 was the
24 high end of where that zone tapped out?

25 MR. CLIZER: Sir, I'm just going to

1 outline exactly what the Commission itself has said
2 in the past. It is as simple as it's 100 basis
3 points or 1 percent below -- above or below the
4 national average. Now, I anticipate presenting
5 evidence today that will show that the current
6 national average, the most recent information we
7 have, is about 9.4. So at 1 percent above, it would
8 be 10.4, and at 1 percent below, it would be 8.4.

9 COMMISSIONER HOLSMAN: Okay.

10 MR. CLIZER: So that -- that would --

11 COMMISSIONER HOLSMAN: And the Company's
12 at 11.35. Correct?

13 MR. CLIZER: That is their current
14 request, yes.

15 COMMISSIONER HOLSMAN: And do you think
16 that the almost an entire point above that zone is
17 predicated on their perception of what their risk is
18 in this business model?

19 MR. CLIZER: Sir, I really probably
20 should not be trying to speculate as to the exact
21 reason for why the Company makes its request because
22 I'm --

23 COMMISSIONER HOLSMAN: Okay. I'll ask --

24 MR. CLIZER: -- certain that's something
25 that -- oh, that's good idea. Thank you, sir.

1 COMMISSIONER HOLSMAN: Yeah. I'll ask
2 the Company. I'm trying to understand, you know,
3 what, you know, the point difference there and from
4 your perspective. But that's okay. I understand you
5 not -- you demurring on that question.

6 Judge, that's all the questions I have
7 for now. I appreciate it. Thank you.

8 JUDGE HATCHER: Thank you, Commissioner
9 Holsman. Thank you, Mr. Clizer.

10 Confluence, go ahead and call your first
11 witness.

12 MR. COOPER: We would call
13 Mr. D'Ascendis.

14 JUDGE HATCHER: Thank you, sir. Please
15 raise your right hand.

16 DYLAN D'ASCENDIS

17 The witness, having been first duly sworn,
18 testified as follows:

19 JUDGE HATCHER: Thank you. Please have a
20 seat. Your witness.

21 MR. COOPER: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. COOPER:

24 Q. Thank you. Will you please state your
25 name.

1 A. Yes. It's Dylan, D-y-l-a-n, D'Ascendis,
2 D-A-s-c-e-n-d-i-s.

3 Q. By whom are you employed and in what
4 capacity?

5 A. I am a partner at ScottMadden, Inc.

6 Q. Are you appearing today on behalf of
7 Confluence Rivers Utility Operating Company, Inc.?

8 A. I am.

9 Q. Have you caused to be prepared for the
10 purposes of this proceeding certain direct testimony,
11 rebuttal testimony and public and confidential
12 formats, and surrebuttal testimony in question and
13 answer form?

14 A. Yes, sir.

15 Q. Is it your understanding that that
16 testimony has been marked as Exhibits 7, 8, and 8C,
17 and 9 for identification?

18 A. Yes.

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

21 A. I don't.

22 Q. If I ask you the questions which are
23 contained in Exhibits 7, 8, 8C, and 9 today, would
24 your answers be the same?

25 A. They would.

1 Q. Are those answers true and correct to the
2 best of your information, knowledge, and belief?

3 A. They are.

4 MR. COOPER: Your Honor, I would offer
5 Exhibits 7, 8, 8C, and 9 into evidence and tender the
6 witness for cross-examination.

7 JUDGE HATCHER: You've heard the motion
8 by counsel. Are there any objections to any of the
9 exhibits offered? Hearing none, they are all so
10 admitted. Again, those are 7, 8, 8C, and 9.

11 (Company Exhibits 7, 8, 8C, and 9 were
12 admitted.)

13 JUDGE HATCHER: Your witness. You
14 tendered the witness? Thank you.

15 MR. COOPER: I did, I'm sorry.

16 JUDGE HATCHER: Mr. Thompson.

17 MR. THOMPSON: No questions, thank you.

18 JUDGE HATCHER: Mr. Clizer.

19 MR. CLIZER: No questions at this time.
20 Thank you, your Honor.

21 JUDGE HATCHER: Are there any
22 commissioner questions?

23 COMMISSIONER HOLSMAN: Judge.

24 JUDGE HATCHER: Yes, Commissioner
25 Holsman.

1 COMMISSIONER HOLSMAN: Yes. I have a
2 couple questions.

3 JUDGE HATCHER: Yes, go ahead.

4 QUESTIONS

5 BY COMMISSIONER HOLSMAN:

6 Q. Thank you. In the mini opening it was
7 stated that the Company decided not to pursue the
8 full amount of debt that it could have acquired, that
9 they sought 50 percent instead of going up to the 55
10 percent. What would be the Company's reasoning for
11 not taking the full amount that was available?

12 A. Thanks for the question, Commissioner. I
13 wouldn't know the -- the motivations behind the
14 taking of the additional capital, but generally in my
15 rebuttal testimony I discuss that companies usually
16 only take capital when it's needed. So if -- if
17 there was an opportunity to take additional debt
18 capital when that capital was not needed by the
19 Company, that they shouldn't take it in risks of
20 being overcapitalized.

21 Q. Do you find that to be a common practice
22 across the country? There was a citing of another
23 company in Missouri, a gas company, that did take the
24 full amount of debt opportunity. Do you find
25 companies not taking that full amount to be a common

1 practice?

2 A. I think it -- like I said, I think they
3 take it if they need it. If they don't need it, then
4 it's just sitting there doing nothing and you're --
5 and then they are and by -- by extension the
6 customers are paying interest on thing -- on money
7 that they aren't getting to see the benefit of. So
8 it's all about whether or not their CapEx or their --
9 or their operations need that capital.

10 So -- so I mean, it depends on -- say if
11 the Company raised equity in favor of debt at that
12 same time, there could be questions there. But like
13 I said, I don't know the specifics of how and when
14 that capital was available and whether or not they
15 needed the capital at that time. So like I said, it
16 might be a question for Mr. Thies or Mr. Cox, but
17 generally com -- generally companies don't take out
18 extra equity or debt because then the customer has to
19 pay unnecessarily.

20 Q. Now, we talked about the zone of
21 reasonableness maxing out at 10.4, but the Company's
22 requesting a whole point higher than that. Do you
23 think that that is a reflection of the business model
24 and the risk associated, or why do you think the
25 Company is a whole point above the high end of the

1 zone of reasonableness for the national average?

2 A. Sure. I think Mr. Cooper said something
3 about it's not a hard and fast rule. I think the --
4 the cites that Mr. Murray have for that zone of
5 reasonableness is, the latest case was 2008, so
6 that's 15 years ago. And I didn't see any recent --
7 recent events or recent cases that reference the zone
8 of reasonableness.

9 But generally my -- my unadjusted range is
10 from 10.36 to 11.36 which is at the top end of that
11 range of reasonableness. That would stop at 10.6
12 which would be the hundred basis points over the
13 average. And then from my unadjusted range, I added
14 company-specific risk factors, 100 basis points for
15 their operating risks and approximately 50 basis
16 points for their less financial risk due to their
17 capital structure being higher than the proxy group.

18 COMMISSIONER HOLSMAN: Okay. Thank you,
19 Judge. That's all the questions I have.

20 MR. D'ASCENDIS: Thank you.

21 JUDGE HATCHER: Thank you, Commissioner
22 Holsman. And I have been derelict. I want to make
23 sure that the records reflects the attendance of
24 Commissioner Kayla Hahn. And I believe Commissioner
25 Hahn also has questions.

1 COMMISSIONER HAHN: Thank you.

2 QUESTIONS

3 BY COMMISSIONER HAHN:

4 Q. You likely heard my question earlier
5 about other states -- other jurisdictions in which
6 Central States operates their return on equity. In
7 those other states, what are some of the ranges of
8 ROEs provided? I've heard from OPC that Louisiana
9 had a 9.5 percent, but I also heard that Texas, your
10 I think CEO had referenced that it's a great
11 environment to invest in. Can you speak to that ROE
12 or other jurisdictions' ROE for Central States?

13 A. So in -- so in Texas I think they're
14 currently in the middle of their first rate case from
15 what I believe, so there isn't an authorized ROE for
16 their systems right now. Mr. Cox might have been
17 referring to the fair market value legislation in
18 Texas which -- which means that the Company, when
19 they -- when they acquire a company, the rate base is
20 reflected at the purchase price as opposed to the --
21 the net book value. So it's a built-in acquisition
22 adjustment. So that's a little -- that's a little
23 bit different and a little bit more constructive than
24 what you'll see in other places. There are about 15
25 other states that do that.

1 And then -- and then talking and speaking
2 to what Mr. Thompson said about ROE acquisition
3 adjustments, there are two that I know of on the
4 books. One in Connecticut and one in Pennsylvania.
5 And I have them if you -- if you want them in a
6 late-filed exhibit, but there are, for companies that
7 buy distressed water companies, there is statute on
8 the books in both of those states about applying an
9 ROE premium on those.

10 So now it's not a hard and fast hundred
11 basis points or 75 basis points or however many basis
12 points; it's up to the Commission to come up with
13 that number in those states. But that's -- that's
14 one thing.

15 And then I think there was a reference to
16 Kentucky and the 9.9. And that 9.9, if you wanted to
17 compare that to what was being authorized in that
18 state for other utilities, I think there was a 9.25
19 for a gas case in that -- in that same time frame.
20 So you're looking at a 65-basis point adjustment
21 based on that and you're talking about gas versus
22 water. Some people think that's more risky, gas
23 companies. And then also it's 2020. Risk-free rates
24 were 2 percent; now they're 4 and a quarter percent.
25 So there's a lot of different things where costs have

1 gone up since then and there might be other type of
2 comparisons that you might make.

3 But the key is is that these commissions
4 do recognize, at least Kentucky they recognize that
5 they're higher risk than the normal company. They
6 don't say it specifically. I'm sorry to keep on
7 talking.

8 Q. No, that's really helpful. I appreciate
9 it.

10 One more question. Do you know what the
11 average authorized ROE is for water companies in the
12 U.S.?

13 A. I think Mr. Walters has that in his
14 testimony. I think it was 9.61.

15 COMMISSIONER HAHN: Thank you.

16 CHAIRMAN RUPP: Hey, Judge, it's
17 Commissioner Rupp.

18 JUDGE HATCHER: Yes, Chairman. Welcome.

19 CHAIRMAN RUPP: I have a question.

20 JUDGE HATCHER: Go ahead.

21 QUESTIONS

22 BY CHAIRMAN RUPP:

23 Q. So the zone of reasonableness has been
24 discussed here. Would it be unreasonable for the
25 Commission to find an ROE that is above 10.4?

1 A. I -- I think so, Mr. Chairman. It's one
2 of those things where that -- that zone of
3 reasonableness is set on traditional water companies.
4 So when you're looking at the operations of the
5 Company, it's recognized that they do -- or they're
6 extraordinary in their picking off, and it's more of
7 a triage unit than a water company. And when you're
8 looking at it that way, you can see, and even
9 Mr. Murray reflects a 65 basis points over and above
10 what he would recommend for a typical water company.

11 So if you look at it that way, you can see
12 that the range of reasonableness is for a water -- a
13 traditional utility water company whereas this one,
14 this company is recognized by both Staff and OPC are
15 significantly riskier. And because of that, they
16 should -- you should put that adder on top of there.

17 So if you took -- if you took
18 Mr. Murray's 65 basis points on top of that 10.4,
19 you're looking at 11 -- 11.05. And if you're looking
20 at what's in the record which is 10.6, you're looking
21 at -- you're looking at 11.5.

22 Q. So let me repeat my question. If the
23 Commission does an ROE that was above 10.4 outside of
24 the, quote, unquote, zone of unreasonableness, my
25 question is would that be unreasonable?

1 A. It wouldn't be, no.

2 CHAIRMAN RUPP: Okay. Great. Thank you.

3 MR. D'ASCENDIS: Thank you.

4 JUDGE HATCHER: Thank you, Chairman. And
5 I'd also like the record to reflect the attendance
6 via Webex of our chairman Scott Rupp. Let's move on.
7 The Bench doesn't have any questions. That'll take
8 us to recross. Mr. Thompson.

9 MR. THOMPSON: I don't have any
10 questions. Thank you.

11 JUDGE HATCHER: Mr. Clizer.

12 RECROSS-EXAMINATION

13 BY MR. CLIZER:

14 Q. Mr. D'Ascendis, there was discussion
15 regarding the state of Kentucky. Do you recall
16 that?

17 A. Yes, sir.

18 Q. You would agree with me the state of
19 Kentucky has previously dismissed or chosen not to
20 adopt your small business adder?

21 A. Yes, sir.

22 MR. CLIZER: I have no further questions.
23 Thank you.

24 JUDGE HATCHER: And redirect.

25 MR. COOPER: Thank you, your Honor.

1 REDIRECT EXAMINATION

2 BY MR. COOPER:

3 Q. Mr. D'Ascendis, you were asked a question
4 about why a company would not take on more debt than
5 it has. Did you do a cash flow analysis in this case
6 for the Company, and if so, did it show -- or did
7 your analysis of the Company, did your analysis of
8 the Company show whether there was cash flow
9 available to support more debt than what the Company
10 currently has?

11 A. I haven't, but I understand that there
12 are net operating losses. So it's one of those
13 things where right now they can't even pay the
14 principal on their debt now. So what company's going
15 to say, Hey, let's give you more debt. You can't --
16 you can't pay your -- you can't pay your mortgage
17 now, let's levy you out some more. And so it just
18 doesn't make much sense to take out more than you can
19 afford.

20 MR. COOPER: That's all the questions I
21 have, your Honor.

22 JUDGE HATCHER: Thank you,
23 Mr. D'Ascendis. You're excused from the stand
24 subject to recall.

25 Confluence, go ahead and call your next

1 witness.

2 MR. COOPER: Thank you, sir. We'd call
3 Mr. Thies.

4 JUDGE HATCHER: Mr. Thies, come on to the
5 stand. And I'll announce for the benefit of those in
6 the audience, Mr. Thies has already been sworn in and
7 that oath is still in effect for the duration of this
8 proceeding.

9 Confluence, your witness.

10 BRENT THIES

11 The witness, having been previously sworn,
12 testified as follows:

13 MR. COOPER: Thank you, your Honor.

14 DIRECT EXAMINATION

15 BY MR. COOPER:

16 Q. Would you state your name.

17 A. Brent Thies, T-h-i-e-s.

18 MR. COOPER: Your Honor, Mr. Thies's
19 testimony has already been admitted into evidence and
20 so we would tender him for cross-examination.

21 JUDGE HATCHER: Mr. Thompson.

22 MR. THOMPSON: No questions, thank you.

23 JUDGE HATCHER: Mr. Clizer.

24 MR. CLIZER: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. CLIZER:

2 Q. You are the vice president and corporate
3 controller of the Company. Correct?

4 A. That's correct.

5 Q. So you would be familiar with the
6 Company's tax returns. Is that correct?

7 A. That's correct.

8 MR. CLIZER: Your Honor, I'd like to
9 mark an exhibit. Should be Exhibit 222. This will
10 be 222C; it's confidential. I will endeavor to
11 ensure that we do not have to go on camera. I will
12 take this matter slowly.

13 JUDGE HATCHER: Thank you, sir. So
14 marked.

15 (OPC Exhibit 222C was marked for
16 identification.)

17 BY MR. CLIZER:

18 Q. Now, because -- well, it is my
19 understanding this would be confidential. Correct?

20 A. Yes.

21 Q. All right. Because this is confidential
22 I'm going to attempt to ask each of these questions
23 in a manner that does not suppose the answer. I want
24 you to pause for a second to ensure that the question
25 answer does not breach confidentiality. And if we

1 need to, we can then proceed en camera. Does that
2 make sense?

3 A. Yes.

4 Q. Okay. Can you identify this document?

5 A. This is the calendar year 2019 tax return
6 for Indian Hills Utility Holding Company. Yeah.

7 Q. Starting on the page with the two-year
8 comparison which is the third sheet, the first page
9 of the third sheet if you follow me.

10 A. Got it.

11 Q. Is there an interest item under the
12 deductions on that page?

13 A. Yes.

14 Q. Okay. Now, I'm going to ask for another
15 exhibit to be marked. I'm going through this slowly
16 to try and, again, avoid any confidential issues.
17 But this next one would be public. This is 223. So
18 marked or?

19 JUDGE HATCHER: So marked.

20 (OPC Exhibit 223 was marked for
21 identification.)

22 BY MR. CLIZER:

23 Q. Keep that one handy for a second.

24 A. Gotcha.

25 Q. We're going to go back and forth.

1 MR. THOMPSON: Thank you.

2 MR. CLIZER: Your Honor, for the record I
3 guess 22C [sic] would be Indian Hills 2019 tax
4 return. This next document 223 will be Indian Hills
5 annual report for 2018.

6 BY MR. CLIZER:

7 Q. And although I've stated the name, I'm
8 going to ask you, Mr. Thies, can you identify this?

9 A. This is the calendar year 2018 annual
10 report for Indian Hills Utility Operating Company.

11 Q. Bear with me. There it is. Could you
12 turn to page W1 for me.

13 A. I have it.

14 Q. And you would agree with me that line 20
15 there is an interest expense listed for two hundred
16 and seventy three thousand dollars and three hundred
17 and sixty-two cents [sic]. Correct?

18 A. That's correct.

19 Q. I'm going to ask this again and pause.
20 How does that number compare to the amount found for
21 comparison in the prior year in the 2019 tax returns?

22 A. It --

23 Q. Hang on.

24 Is that going to be a confidentiality
25 issue?

1 MR. COOPER: I don't think that is a
2 problem, John.

3 BY MR. CLIZER:

4 Q. Okay. So the interest expense included
5 for the prior year in the 2019 tax return, which you
6 agree with me would be 2018?

7 A. Uh-huh.

8 Q. How does that number compare to the number
9 found in the 2018 annual report?

10 A. It is the same.

11 Q. Right. And that would reflect the fact
12 that the Company was reporting for income tax
13 purposes an interest expense deduction. Correct?

14 A. Correct.

15 Q. All right. Again, I'm sorry I'm
16 proceeding through this. But I'm going to mark the
17 next Exhibit 224.

18 A. Can I put any of these away or should I
19 hold on to them.

20 Q. Hold on to it one more time.

21 JUDGE HATCHER: 224 so marked.

22 (OPC Exhibit 224 was marked for
23 identification.)

24 MR. CLIZER: And this is the annual
25 report for Indian Hills 2019.

1 BY MR. CLIZER:

2 Q. And for the record, Mr. Thies, can you
3 identify 224.

4 A. That was the one you just handed me.
5 Correct?

6 Q. Correct.

7 A. This is the calendar year 2019 annual
8 report to the Missouri Public Service Commission for
9 Indian Hill Utility Operating Company.

10 Q. And can you turn to page W1 for me.

11 A. Yes. Bear with me.

12 Q. Take your time.

13 A. Okay. I'm there.

14 Q. And again, it's the same question
15 effectively. Line 20, the interest expense, would
16 you agree with me that that's substantially the same
17 as the interest expense included in the income tax
18 return for 2019?

19 A. Yes.

20 Q. And you would agree with me again that's
21 because for income tax purposes, the Company was
22 reflecting interest expense deduction that is
23 equivalent to what's included in the annual report,
24 or nearly equivalent?

25 A. Yes.

1 Q. All right. Now, with regard -- sorry.
2 Turning back to the 2018 annual report which has been
3 marked 223.

4 A. Okay.

5 Q. Can you find page 9 for me.

6 A. 2018. Correct?

7 Q. Yeah.

8 A. Yes.

9 Q. And you would agree with me that page 9 is
10 the interest expense, notes payable, bonds, bank
11 loan, and other debts reported by the Company.
12 Correct?

13 A. That's correct.

14 Q. And you would agree with me that the only
15 note payable on that form is from Fresh Start
16 Ventures, LLC. Correct?

17 A. That's correct.

18 Q. And that reflects a total interest paid
19 during the year of \$273,362. Correct?

20 A. That's correct.

21 Q. Which is the same amount included as the
22 interest deduction in the Company's annual reports
23 and as we have now established on the record, in the
24 tax return. Correct?

25 A. That's correct.

1 Q. And if we turn to the 2019 report and I
2 find the same page 9, you would agree me that it also
3 lists a loan from Fresh Start Ventures, LLC as the
4 only debt for the Company. Correct?

5 A. That's correct.

6 Q. And it also lists an interest paid during
7 the tax year of \$274,421 which is the same amount
8 included on the interest deduction for the annual
9 report and very nearly the same for the tax return.
10 Correct?

11 A. Correct.

12 Q. All right. Are you familiar with the
13 Fresh Start Venture loan?

14 A. I was responsible for making some of the
15 payments and doing some of these calculations, so
16 yes.

17 Q. Are you familiar with the Commission's
18 prior ruling regarding that loan?

19 A. The financing case of approving it?
20 What -- which ruling?

21 Q. Sorry. Specifically are you familiar with
22 the Indian Hills rate case that concerned whether or
23 not the loan was a proper transaction?

24 A. I'm -- I was employed by the Company in
25 the middle of that case, so I'm familiar with the

1 order and the interest rate that was approved in
2 the -- in the order.

3 Q. That works. I'm just going to go ahead
4 and mark another exhibit. I'm falling behind here,
5 but I believe that would be 225. I keep wanting to
6 say the 20s in there.

7 JUDGE HATCHER: Yes, so marked.

8 (OPC Exhibit 225 was marked for
9 identification.)

10 BY MR. CLIZER:

11 Q. Sorry, this is a thick one. You said you
12 were familiar with the Report and Order in that case?

13 A. Yes.

14 Q. And you would agree with me that this is
15 the Report and Order issued in the Indian Hills rate
16 case company?

17 A. That's correct.

18 Q. Can you turn to page 51 for me.

19 A. Okay.

20 Q. Actually let's start with page 50. You
21 would agree with me that Finding of Fact 1 states,
22 Indian Hills' cost of debt is significantly above
23 market cost of debt for a distressed public utility.
24 Indian Hills cost of debt is the result of dealings
25 among entities closely interrelated with Indian Hills

1 through chains of common ownership on both sides of
2 the transaction as follows.

3 And it continues on the next page. I
4 won't read it all out, but it identifies the lenders
5 and borrowers and their interconnected nature. Do
6 you agree with me on that?

7 A. I do.

8 Q. If we turn to page 56.

9 A. Yes.

10 Q. And I'm going to start with the first full
11 paragraph, and I'll skip the first sentence. So I'm
12 starting with, The loan did not resemble an arms'
13 length transaction because the Glarners are behind
14 each end of the transaction. The Commission
15 understands the legal status of business
16 organizations as legal persons. The Commission
17 cannot ignore financial reality.

18 Is that correct?

19 A. That's correct.

20 Q. So you would agree with me that the
21 Commission has previously found that the Fresh Start
22 Venture loan was effectively a loan made by owners of
23 the Company itself. Correct?

24 A. It appears to say that, yes.

25 Q. And you would agree with me based on the

1 annual report and the income tax return that we've
2 viewed thus far, that the Company is including an
3 interest expense deduction in its annual report and
4 its income taxes based on this loan that the Company
5 made to itself?

6 A. There is -- there is interest in the -- in
7 the expenses, yes.

8 Q. And the interest expense is made based on
9 the Fresh Start loan. Correct?

10 A. Correct.

11 Q. Which is a loan that the Company found --
12 sorry -- the Commission found the Company had made to
13 itself. Sorry. Let me rephrase that because I
14 botched it.

15 You would agree with me that the
16 Commission has found that the Fresh Start loan was a
17 loan that the Company effectively made to itself?

18 A. Through common ownership it appears, yes.

19 Q. I'm going to ask you to return to the 2018
20 annual report.

21 A. Give me a minute; I'm going to organize
22 here.

23 Q. Understandable. It's a messy situation.

24 A. 2018 you said?

25 Q. Yes.

1 A. Okay. I've got it right here.

2 Q. The net operating loss identified on
3 page W1 at line -- at line 23. Let me direct you
4 first to page W1.

5 A. Got it.

6 Q. You would agree me the net operating loss
7 there is listed as \$283,299?

8 A. That's correct.

9 Q. And you would agree with me that the
10 interest expense was \$273,362?

11 A. Correct.

12 Q. And would you agree with me that if I
13 removed the interest expense for the loan that you
14 had to yourself, the actual total net operating loss
15 of the Company would drop significantly. Correct?

16 A. To negative \$10,000 it appears.

17 Q. And again I'm going to ask you to go to
18 the 2019 annual report.

19 A. Okay.

20 Q. And again I'm going to ask you to go to
21 page W1.

22 A. Okay.

23 Q. And you would agree with me in this case
24 that line 23, the net income is \$201,273?

25 A. Correct.

- 1 Q. And that the interest expense is \$274,121?
- 2 A. That's correct.
- 3 Q. And you would agree with me that if I
- 4 removed the interest expense for the loan that the
- 5 Company made to itself, the Company's actual net
- 6 total income would become positive?
- 7 A. Yes. Removing the interest expense would
- 8 result in positive income.
- 9 Q. So but for the interest payments made on
- 10 the loan the Company made to itself, the Company
- 11 would have had positive income in the year 2019 for
- 12 Indian Hills?
- 13 A. That's correct.
- 14 Q. Mr. Thies -- and I apologize, actually how
- 15 exactly is it? Is it Thies or Thies?
- 16 A. Thies.
- 17 Q. Thies. I'm very sorry.
- 18 A. No problem.
- 19 Q. Mr. Thies, is the Company continuing to
- 20 make interest payments on the Fresh Start loan?
- 21 A. No.
- 22 Q. Has the Company continued to make Fresh --
- 23 interest payments on the Fresh Start loan up
- 24 through 2020?
- 25 A. Yes.

1 Q. Has the Company continued to record the
2 interest deductions related to that payment on its
3 tax returns?

4 A. Yes.

5 Q. Do you know what amount of the Company's
6 total net operating losses are directly the result of
7 the interest expense deductions that the Company has
8 made for the loan that it made to itself?

9 A. No, I wouldn't know that.

10 Q. Would you be surprised to learn if the OPC
11 developed that information?

12 A. No.

13 MR. CLIZER: All right. I think I'm
14 going to move for the admission -- yes. All
15 right. I think I'm going to move for the admission
16 of 222C, 223, 224, and 225.

17 JUDGE HATCHER: You heard the motion of
18 counsel. Mr. Cooper?

19 MR. COOPER: No objection.

20 MR. THOMPSON: No objection, Judge.

21 JUDGE HATCHER: All are admitted. I'll
22 repeat for the record, Exhibit 22C [sic] which is
23 confidential, Exhibit 223, 224 and 225.

24 (OPC Exhibits 222C, 223, 224, and 225
25 were admitted.)

1 JUDGE HATCHER: Mr. Clizer.

2 MR. CLIZER: I have -- I had no further
3 questions. Thank you.

4 MR. THIES: Can I put these away?

5 MR. CLIZER: It's up to him. I don't
6 need them for anything else.

7 JUDGE HATCHER: Where are we?

8 MR. CLIZER: We'd be now turning to
9 redirect.

10 JUDGE HATCHER: Okay. No, this is
11 cross-examination.

12 MR. COOPER: I think we're -- yeah. I
13 think we're going to Bench questions.

14 MR. CLIZER: I'd forgotten where we were
15 at.

16 JUDGE HATCHER: Thank you. Are there any
17 commissioner questions for Mr. Thies?

18 COMMISSIONER HOLSMAN: Judge, I have a
19 question.

20 JUDGE HATCHER: Yes. Commissioner
21 Holsman, go ahead.

22 COMMISSIONER HOLSMAN: Thank you.

23 QUESTIONS

24 BY COMMISSIONER HOLSMAN:

25 Q. Thank you, Mr. Thies. So we've

1 established that the national average is
2 around 9.6, may -- 9.4 to 9.6. That zone of
3 reasonableness takes us up to 10.4 or 10.6 depending
4 on which number we're using. Confluence is asking
5 for 11.35. What is the Company's justification for
6 being almost 2 basis points outside of the national
7 average?

8 A. I mean, I would, you know, defer to
9 Mr. D'Ascendis's testimony to talk about the risks
10 and those kinds of things, but I think, you know, at
11 the end of the day, you know, the Company, as we
12 talked about with taxes, it has been in a net
13 operating loss position. So it comes down to sort of
14 not having cash to do what we need to do and to pay
15 the debt and those kinds of things has, you know,
16 increased our risk profile. But the specifics of
17 that, I absolutely should leave to Mr. D'Ascendis and
18 others who are more familiar with calculations on the
19 business and financial risk.

20 Q. OPC has stated that when you get your
21 systems through a rate case, you're earning over 30
22 percent in some instances. Do you agree with that,
23 that once the system has gone through a rate case
24 and the rate's been normalized, that you're seeing
25 almost 30 percent return?

1 A. You know, initially I don't. I did not
2 admittedly do a deep dive into Mr. Murray's numbers.
3 I think, you know, part of what has happened here is,
4 you know, the Commission approved consolidation of
5 these companies, so, you know, it's not that helpful
6 now from my perspective to break them apart and talk
7 about them as separate. You know, we consolidated
8 for the efficiencies and operation -- both
9 operational and financial. And so looking at them
10 individually now when we're talking about lowering
11 rates on some of those early systems is a little bit
12 of a fruitless exercise in my opinion.

13 Q. You talked about the fact that Confluence
14 didn't take the full amount of debt that they could
15 have. Do you think that not taking the full amount
16 of debt, and I thought there was testimony given that
17 says if you're having a net operating loss, it may
18 not make sense for the Company to assume more debt
19 and more interest on that debt. Do you think that
20 the ratepayers are better served if a company takes
21 its full amount of debt or how are the ratepayers
22 better served?

23 A. I think the ratepayers are served by a
24 healthy company. And, you know, in our conversations
25 with CoBank, you know, which, you know, we appreciate

1 being referred to them by the way, but our
2 conversations with CoBank, you know, they recognize
3 the challenges to our cash flow and for that reason
4 are -- have agreed to interest-only payments for the
5 first year. So the suggestion that, you know, we're
6 hurting customers as opposed to simply trying to make
7 the Company healthy, I don't agree with.

8 So I think the customers are ultimately
9 benefited by a healthy company. Our plan, our policy
10 is to add debt as we have the cash flow to do so into
11 the future. And so at this time we refinanced the
12 existing debt and are, you know, work with CoBank to
13 progress to both payments that cover interest and
14 principal beginning in 2024.

15 Q. Is any of the interest that the Company
16 loaned itself included in this rate case?

17 A. No. No interest from any of those loans
18 is in this case.

19 COMMISSIONER HOLSMAN: Thank you, Judge.
20 That's all the questions I have.

21 JUDGE HATCHER: Thank you, Commissioner
22 Holsman. Any other commissioner questions for
23 Mr. Thies? The Bench has no questions. That'll take
24 us to recross. Mr. Thompson.

25 MR. THOMPSON: Yes, Judge.

1

RECROSS-EXAMINATION

2

BY MR. THOMPSON:

3

Q. You said that no interest on those loans is in this case. Correct?

4

5

A. That is correct.

6

Q. Why is that? What happened to those loans?

7

8

A. They were refinanced.

9

Q. And was that with the money borrowed from CoBank?

10

11

A. Yes.

12

MR. THOMPSON: Okay. And -- no further questions. Thank you.

13

14

JUDGE HATCHER: Thank you, Mr. Thompson.

15

Mr. Clizer.

16

RECROSS-EXAMINATION

17

BY MR. CLIZER:

18

Q. All right. I'm actually going to pick up where he left off. You said that none of the interest from those loans are included in this case, but we have already established, have we not, that the Company has included the interest deductions in its income taxes and its annual reports. Correct?

19

20

21

22

23

24

A. We have.

25

Q. And that interest deduction's directly

1 driving the net operating losses, are they not?

2 A. It is part of it.

3 Q. It is part of it. So the interest
4 deductions on the loan that you made to yourself
5 directly contribute to the net operating losses that
6 you claim. Correct?

7 A. No recovery of net operating losses is
8 being sought in this case.

9 Q. But the net operating losses directly
10 impacts the tax issue that you testified as to last
11 Friday?

12 A. True.

13 Q. And the net operating loss is one of the
14 basis for why the Company's arguing it needs its
15 current ROE. Correct? Not it's current, but, sorry,
16 proposed ROE. Let me rephrase that so it's clear for
17 the record.

18 You would agree with me the net operating
19 losses are directly contributing to one of the
20 reasons why the Company is counting it needs its
21 proposed ROE. Correct?

22 A. Lack of cash, I'm not sure. I'd be
23 reluctant to commit to that statement having not been
24 the ROE witness.

25 Q. Well, you would agree with me that in the

1 opening provided by your counsel, Mr. Cooper, he
2 specifically referenced the lack of money coming into
3 the Company. Correct?

4 A. Cash available, yes.

5 Q. So the net operation losses being incurred
6 by the Company as being put forward at least on some
7 level as an argument for why the Company's proposed
8 rate of return should be adopted? You would agree
9 with that?

10 A. The lack of cash, yes. Yes.

11 Q. And so we've established at this point
12 that the loan that you've made to yourself is driving
13 a portion of the net operating losses which is the
14 fundamental -- let me not overstate myself,
15 apologies.

16 We've established at this point that the
17 loan that you've made to yourself is contributing to
18 the net operating losses. Correct?

19 A. Historically it did, yes.

20 Q. And that is what is driving in part the
21 Company's request in both the ROE and tax issue.
22 Correct?

23 A. I mean, I disagree with driving it. You
24 know, there's a component of interest expense that
25 helped to build to \$9 million in net operating

1 losses, but it sounds like you all have done the
2 math; you can tell me how much of a portion that is I
3 think. The ROE and, you know, from a prospective
4 look at the Company, you know, what cash is available
5 is driving our consideration of our own risk in the
6 future, not necessarily, you know, what happened
7 three and four years ago as a component of today's
8 ROE.

9 MR. CLIZER: All right. No further
10 questions. Thank you.

11 JUDGE HATCHER: Redirect.

12 MR. COOPER: Thank you, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. COOPER:

15 Q. And I think you've said it, but just to be
16 sure, the loan that was highlighted in Mr. Clizer's
17 cross-examination is not a loan that the Company is
18 subject to today. Correct?

19 A. That's correct. It's been paid off.

20 Q. And its initial -- well, say this a little
21 differently. The loan itself was a loan that was
22 entered into after a financing application case
23 before this Commission. Correct?

24 A. That's correct.

25 Q. And obviously approval was given for that

1 loan?

2 A. Correct.

3 Q. You were asked some questions on a system,
4 sort of returns on a system-by-system basis.

5 A. Uh-huh.

6 Q. Does a system-by-system return help the
7 Company today, or is it a -- or is your financial
8 status determined by all your properties in the state
9 of Missouri?

10 A. Yeah. I mean, it's a consolidated hold,
11 whatever that is, the bank or taxing authorities.
12 You know, it's not helpful for us to look at
13 individual systems in those contexts.

14 Q. Is there another factor involved in that,
15 in that the more the Company grows, the smaller the
16 allocations are to individual systems?

17 A. What do you mean allocations? Are you
18 talking about corporate allocations?

19 Q. Let's start with that, yeah.

20 A. Yeah. On a per -- well, on a per-customer
21 basis as the whole company grows, those allocations
22 would be lower on a per-connection, per-customer
23 basis.

24 Q. And if you try to assign those down to
25 specific systems, I suppose the same would be true.

1 Correct?

2 A. Absolutely, yes.

3 Q. In your opinion, Mr. Thies, is there
4 enough cash flow associated with the proposed ROE by
5 the other parties to support additional debt?

6 A. I would need to do further analysis to be
7 absolutely certain, but I do not believe so.

8 MR. COOPER: That's all the questions I
9 have, your Honor.

10 JUDGE HATCHER: Thank you. Mr. Thies,
11 you are excused subject to recall. And I believe we
12 are now moving to Staff's -- I believe we are now
13 going to take a break. It is 10:51. Let's call
14 it 10 after 11:00. I understand it's going to be a
15 little less than an hour before lunch. Mr. Cooper.
16 Oh, I'm sorry.

17 MR. COOPER: I'm sorry, your Honor. Were
18 you finished with your statement?

19 JUDGE HATCHER: Yes.

20 MR. COOPER: I just wanted, before we
21 went off the record, Mr. D'Ascendis obviously is
22 still in the room currently, but if there are no more
23 questions for him, I would ask that he be excused so
24 that he can travel.

25 JUDGE HATCHER: I will pause for a moment

1 to hear from our commissioners who are on the Webex.

2 Any --

3 COMMISSIONER HOLSMAN: No. No further
4 questions, Judge.

5 JUDGE HATCHER: Thank you, Commissioner
6 Holsman. No. Thank you, Mr. D'Ascendis, you are
7 excused. And let's take a break until 10 after
8 11:00. We are off the record and in recess.

9 (Off the record.)

10 JUDGE HATCHER: The recess having
11 expired, let's go back on the record. The judge is
12 aware of a couple witness delays. Let's cover those.
13 OPC is working out how to get some paperwork to
14 cross-examine a Staff witness who is appearing on
15 Webex.

16 We also have a request. Mr. Thies, we
17 have a request for you to return to the stand. Yes,
18 this is going to be out of order, Counsel. I will
19 reengage in another round of recross and redirect.

20 And the water gallon usage estimate
21 issue, I swear I'm going to come up with a better
22 name for that, the 5,000 gallon --

23 MR. THOMPSON: Flow rate.

24 JUDGE HATCHER: Flow rate?

25 MR. THOMPSON: Flow rate.

1 JUDGE HATCHER: Thank you. The flow rate
2 issue.

3 Mr. Thies, go ahead.

4 We have one of Staff witnesses who is not
5 available today on that issue. She may be recalled
6 or may participate and give her testimony later on.
7 We have Mr. Lyons of Confluence who is not available
8 until later this afternoon. I'm just throwing this
9 out there. I do not want to find an answer right
10 now. Do we punt this -- do we punt flow rate issue
11 to another day. I'm just going to throw that out
12 there.

13 Let's turn to Mr. Thies on the stand.
14 Mr. Thies, you have already been sworn in. We have a
15 commissioner question for you.

16 MR. THIES: Okay.

17 JUDGE HATCHER: Commissioner Glen
18 Kolkmeyer, go ahead.

19 COMMISSIONER KOLKMEYER: Thank you,
20 Judge.

21 QUESTIONS

22 BY COMMISSIONER KOLKMEYER:

23 Q. Thank you, Mr. Thies, for coming back.

24 A. Yeah.

25 Q. When did the Company get the loan with

1 CoBank?

2 A. It closed in December, I don't remember
3 the specific day, but December '22.

4 Q. Okay. Is there a tax return done on each
5 system?

6 A. No. Remember, we had six companies and
7 each one of those companies had a return, but now
8 they're all consolidated into one so there's a single
9 tax return that'll be done on all of Confluence
10 Rivers going forward.

11 Q. How are tax returns done? I mean, do you
12 do tax returns on a year until there's a rate case,
13 until a calendar year, until to what?

14 A. Yeah. It's calendar year. Every calendar
15 year you gotta file.

16 Q. But then do you do an individual on these
17 or going forward, if you buy a system, will it --
18 will it be --

19 A. Be on its own?

20 Q. They will be on its own?

21 A. They will not.

22 Q. They will not. Okay.

23 A. So, you know, when we -- we purchase
24 assets, not companies, right. So we buy the pipes
25 and the pumps and incorporate them into whatever is

1 Confluence Rivers. So they just become part of the
2 whole company at that time. They're not separate as
3 a legal entity.

4 Q. So I believe it was the other gentleman,
5 the consultant --

6 A. Yeah.

7 Q. -- that just left.

8 A. Yeah.

9 Q. He testified that the Company is not
10 making principal payments?

11 A. We have an interest-only loan for the
12 first 12 months. And since we closed in
13 December '22 --

14 Q. You're not --

15 A. Yeah.

16 Q. Okay. It's not that you're not able to;
17 it was the deal that was made when the loan was taken
18 out in 2022?

19 A. Correct.

20 COMMISSIONER KOLKMEYER: Okay. Thank you,
21 Judge. Thank you, sir.

22 JUDGE HATCHER: Thank you, Commissioners.
23 Thank you will take us back to recross just to give
24 all the parties an opportunity. Mr. Thompson.

25 MR. THOMPSON: I don't have any

1 questions. Thank you, Judge.

2 JUDGE HATCHER: Mr. Clizer.

3 RECROSS-EXAMINATION

4 BY MR. CLIZER:

5 Q. Just I want to make sure that we're very
6 clear. Indian -- which utility companies, which of
7 the legacy utilities filed tax returns individually
8 before the consolidation that's upcoming?

9 A. Sure. So Hillcrest, Raccoon Creek, Indian
10 Hills, Elm Hills, and Osage filed tax returns before
11 they were consolidated into Confluence Rivers.

12 Q. And they filed individual tax returns
13 until, I believe, 2021. Is that correct?

14 A. That's correct.

15 Q. And the Company's anticipation is that
16 for 2022 moving forward, Confluence Rivers will file
17 a consolidated tax return or just one tax return?

18 A. That's correct.

19 Q. Okay. And just, do you happen to know how
20 far back -- each of those tax returns were filed
21 individually I assume since the point at which the
22 Company was effectively created, slash, acquired?

23 A. Correct, yes. So Hillcrest starts 2015.
24 And I don't remember all the others, but I know those
25 are back that far.

1 Q. Okay. And each one filed individually
2 until -- 2021 will be the last time; 2022 we start
3 consolidating?

4 A. Correct.

5 MR. CLIZER: All right. Just want to make
6 sure that was clear. Thank you.

7 JUDGE HATCHER: Thank you. Redirect.

8 MR. COOPER: Real briefly.

9 REDIRECT EXAMINATION

10 BY MR. COOPER:

11 Q. Just to kind of, I guess, specify a little
12 bit on this consolidation.

13 A. Uh-huh.

14 Q. What you're referring to is the merger of
15 those companies into Confluence Rivers as of what,
16 December 31, 2021 or January 1, 2022. Correct?

17 A. That's correct, yes.

18 Q. And so for the year -- and that's why for
19 the year of 2022, there would be just one tax return.
20 Right?

21 A. That's correct.

22 Q. Okay. And you had a -- you were asked
23 about the agreement to collect -- to pay interest
24 only for the first year of the CoBank loan.

25 A. Correct.

1 Q. What was the genesis of that agreement?

2 A. Thank you. So the clarification there is
3 CoBank understood that we were anticipating a rate
4 case that would allow us to take care of the full
5 boat, if you will, of principal and interest
6 payments. And so that's why they allowed us to pay
7 interest only for the first year.

8 Q. So that agreement provided you some --

9 A. Cushioning.

10 Q. -- breathing room? Yeah.

11 A. Absolutely, uh-huh.

12 Q. And so do you believe that currently you
13 have enough cash flow to pay both interest and
14 principal on that loan?

15 A. We do not currently, no.

16 MR. COOPER: That's all the questions I
17 have.

18 JUDGE HATCHER: Thank you. Thank you,
19 Mr. Thies. We are now at Mr. Walters. Yes. Staff,
20 go ahead and call your next witness.

21 MR. THOMPSON: Thank you, Judge. Staff
22 calls Chris Walters.

23 JUDGE HATCHER: Mr. Walters, if you would
24 please raise your right hand.

25 CHRISTOPHER WALTERS

1 The witness, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 JUDGE HATCHER: Thank you. Your witness.

5 MR. THOMPSON: Thank you, Judge.

6 BY MR. THOMPSON:

7 Q. Please state your name and spell it for
8 the reporter.

9 A. Sure. It is Christopher,
10 C-h-r-i-s-t-o-p-h-e-r, Walters, W-a-l-t-e-r-s.

11 Q. And how are you employed?

12 A. I'm employed as an associate at the firm
13 Brubaker & Associates in Chesterfield, Missouri.

14 Q. Okay. And are you appearing for the
15 Commission Staff today in this matter?

16 A. Yes, I am.

17 Q. And did you prepare or cause to be
18 prepared testimony that has been marked as
19 Exhibits 109, 119 and 132 being direct, rebuttal, and
20 surrebuttal testimony?

21 A. Yes.

22 Q. Do you have any corrections to that
23 testimony?

24 A. I have -- while I cannot make the
25 correction on the stand, I would note that the

1 testimony list provided at the back of my direct
2 testimony before my exhibits somehow is an incomplete
3 list; it's missing about three years of testimony
4 filings. I would speculate that there's between 30
5 and 50 more testimony filings between the most recent
6 date on that testimony list to when I filed in this
7 case.

8 Q. Okay. And could you provide us with an
9 updated copy of that list or the missing pages?

10 A. Yeah, sure.

11 Q. Thank you. And with that correction in
12 mind, is your testimony true and correct to the best
13 of your knowledge and belief?

14 A. Yes.

15 Q. And if I asked you the same questions
16 today, would your answers be the same?

17 A. They would.

18 MR. THOMPSON: Judge, I move the admission
19 of Exhibits 109, 119, and 132.

20 JUDGE HATCHER: You've heard the motion
21 of Counsel. Is there -- are there any objections to
22 the admission of Exhibit 109, 119, 132? Hearing
23 none, they are so admitted.

24 (Staff Exhibit 109, 119, and 132 were
25 admitted.)

1 MR. THOMPSON: Thank you. I tender the
2 witness for cross-examination.

3 JUDGE HATCHER: Mr. Clizer.

4 CROSS-EXAMINATION

5 BY MR. CLIZER:

6 Q. Good morning, Mr. Walters.

7 A. Good morning, Mr. Clizer. Nice to meet
8 you.

9 Q. Nice to meet you as well.

10 Judge, I'm actually going to turn to you
11 for a moment. So I would like to ask Mr. Walters for
12 an email address that I might send these to, but I do
13 not want him to have to read his email address into
14 the record and make it public. What is the most
15 expeditious way that I might accomplish this feat?

16 JUDGE HATCHER: You could have emailed him
17 before we came on the record.

18 MR. CLIZER: I apologize. We were trying
19 to get things wrapped up.

20 IT DIRECTOR: I can mute the screen.

21 JUDGE HATCHER: Okay. Our technical
22 director has said he can mute the livestream so that
23 only the people on the Webex can hear.

24 MR. CLIZER: The alternative is if Staff
25 happens to have his email address or something and

1 can just provide it to me.

2 JUDGE HATCHER: All good questions before
3 we came on the record.

4 MR. CLIZER: I apologize once again. I
5 was scrambling to get --

6 JUDGE HATCHER: That's okay. We're going
7 to go off the record for about 60 seconds. Let's go
8 off the record.

9 (Off the record.)

10 JUDGE HATCHER: Let's go on the record.
11 Mr. Clizer, your witness.

12 MR. CLIZER: Yes.

13 BY MR. CLIZER:

14 Q. Mr. Walters, there should be an email
15 coming to you at some point in the future, but I'm
16 going to begin asking some questions that don't
17 necessarily result -- require them, but do keep an
18 eye out for that email address.

19 A. Understood.

20 Q. Mr. Walters, have you been listening to
21 the openings that have been made, both the general
22 openings that were made last Thursday and specific
23 openings related to this issue made today?

24 A. Yes, I have.

25 Q. Do you recall statements by Mr. Woodsmall

1 on behalf of Confluence that Staff and OPC's proposed
2 revenue requirement would not provide sufficient cash
3 flows to service its debt?

4 A. Yeah. I remember his statement along
5 those lines.

6 Q. You would agree with me that this is not a
7 correct statement. Right?

8 A. Yeah. I don't believe that statement to
9 be true.

10 Q. And you would agree with me that both
11 Staff and OPC's rate of return recommendations would
12 be sufficient to ensure a strong investment-grade
13 credit rating like a BBB-plus or A-plus?

14 A. Yeah. I've performed a credit metric
15 analysis after Staff filed surrebuttal testimony, and
16 I believe that the rec -- at least the
17 recommendations on behalf of Staff would support a
18 reco -- a credit rating based on the S&P methodology
19 between BBB-plus to A-plus.

20 Q. Were you able to review the credit
21 record -- credit metric analysis performed by
22 Mr. Murray in this case?

23 A. Yes, I did actually, after I performed my
24 analysis after the fact. But, yeah, I have reviewed
25 it.

1 Q. And would you agree with the -- would you
2 substantially agree with the results that Mr. Murray
3 concluded regarding the credit metrics that are
4 achievable with his recommendation?

5 A. Yeah. I actually calculated the exact
6 same debt-to-EBITDA and FFO-to-debt metrics that
7 Mr. Murray calculated, but I believe Mr. Murray
8 relied on the rebuttal accounting schedules. The
9 only difference I guess between my analysis that I've
10 done subsequently would be based on Staff's
11 surrebuttal position. But yes, I would largely agree
12 with the metrics that Mr. Murray calculated.

13 I would note that I believe Mr. Murray
14 relied on what's call the medial volatility table and
15 he assumed a strong business risk profile for S&P. I
16 think -- which are harder to achieve metrics to
17 support those credit ratings than what I believe
18 Confluence would otherwise be assessed against. But
19 I'm not aware of any water utility being assessed on
20 the medial volatility credit rating metrics. All of
21 them that I'm aware of are assessed on the low
22 volatility metrics which require much more lax cash
23 flow coverages.

24 But in any event, no matter which metrics
25 you look at, their credit rating would be a very

1 strong investment-grade rating.

2 Q. I want to make sure I understood that.
3 You're telling me that your analysis was -- the only
4 difference between your analysis and Mr. Murray's was
5 that you felt Mr. Murray was actually holding the
6 Company to a higher standard than investors would
7 hold it to?

8 A. Yes.

9 Q. But Mr. Murray's --

10 A. Yeah.

11 Q. I'm sorry, please continue.

12 A. I would just say, like I said, I'm not
13 aware of any water utility that is assessed on the
14 medial volatility metric table by S&P. That's more
15 for electric utilities, multi-utilities, and some --
16 some gas. The low volatility table is -- all water
17 utilities that I'm aware of are assessed against that
18 as well as some gas utilities.

19 Q. But under both circumstances the Company
20 was found to have a credit rating that would support
21 an extremely strong investment-grade rating?

22 A. Yeah. The indicated rating analyses would
23 show that they would have a very strong investment
24 grade on either -- which regardless of the table used
25 to assess the Company's metrics.

1 Q. Are you aware of Confluence's business
2 model?

3 A. Generally, yes.

4 Q. And you would agree with me the Company
5 promotes itself as buying troubled and distressed
6 water or wastewater systems?

7 A. Yes.

8 Q. And you would agree with me though that
9 Confluence is not the only U.S. water company to
10 acquire distressed water and/or wastewater systems.
11 Correct?

12 A. I would agree with that. In fact, I
13 believe it to be the, what has been national trend
14 over the last few years and is consid -- or expected
15 to be the status quo going forward. I think there
16 was a report that was issued by S&P Capital IQ or one
17 of their divisions, Regulatory Research Associates,
18 that state as much, that buying of distressed systems
19 would be the path forward and has been the path for
20 growth in recent years for water utilities.

21 Q. So you're saying that there are a
22 significant number of water utilities that would be
23 interested in expanding by buying distressed systems
24 in the state of Missouri?

25 A. I just think -- I mean, that's the

1 national trend. I would expect that there be -- that
2 would -- there would be interest in doing that around
3 the country. I cannot necessarily specify which
4 companies are doing that or at what rate. I just
5 know that in one of the most cited sources in the
6 regulatory arena, Regulatory Research Associates,
7 part of S&P, they note that that as being the
8 national trend, is expected to be the path going
9 forward.

10 Q. Now, you were already earlier told me that
11 you were listening to the opening statements.
12 Correct?

13 A. Yes.

14 Q. And so you heard your own counsel,
15 Mr. Thompson, suggest to the Commission that it could
16 raise Confluence's rate of return as a mean of
17 incentivizing the acquisition of troubled water and
18 wastewater systems. Do you recall that?

19 A. I do.

20 Q. And I don't mean to drive a wedge between
21 a witness and the attorney, but do you agree with
22 that statement?

23 A. I generally do not agree that -- that to
24 be the correct way for a couple reasons. And as an
25 initial matter one of the primary underpinnings of

1 financial theory is that investors shall not be
2 compensated for business-specific risks.

3 You know, business risks are considered to
4 be diversifiable risks that can be mitigated or
5 eliminated through portfolio diversification. And
6 that's an important point because the largest
7 investors of utility stocks are institutional
8 investors and there is no doubt that they are
9 absolutely invested in diversified portfolios. And
10 as I previously just discussed with you moments ago,
11 you know, acquiring troubled or distressed systems
12 has been the national trend for a few years and is
13 expected to be that going forward. So buying those
14 troubled systems is kind of baked in, if you will, in
15 assessing the cost of equity capital through the
16 proxy group.

17 Q. Now, were you listening earlier during the
18 testimony of Staff -- Company witness,
19 Mr. D'Ascendis?

20 A. Yes.

21 Q. Mr. D'Ascendis discussed a small business
22 adjustment that he made as part of his analysis. Do
23 you recall that?

24 A. Yes.

25 Q. Are you generally familiar with what I'm

1 referring to in that circumstances?

2 A. The plus 100 basis points for business
3 risk that he was I believe predicated on a -- the
4 small size?

5 Q. Yes. That's what I'm referring to.

6 A. Yes.

7 Q. Do you agree that that's a reasonable
8 adjustment to be making in this case?

9 A. No.

10 MR. COOPER: Your Honor, I would object to
11 this question, and I'll tell you why. Because I
12 think it violates our rule on prefiled testimony
13 here. We're supplementing testimony that certainly
14 Mr. Walters could have, and if he didn't, I suppose
15 maybe should have filed as a part of his testimony so
16 that it could be responded to by other witnesses.

17 MR. THOMPSON: Judge, if I could, he did
18 make that testimony in the prefiled testimony, so
19 Mr. Cooper's point is entirely wrong.

20 MR. COOPER: But if he already made it,
21 then I think my point is still right. We're merely
22 supplementing testimony again in this case that
23 apparently he already has on the record.

24 MR. CLIZER: May I? No, okay.

25 JUDGE HATCHER: I was giving Mr. Thompson

1 first crack.

2 MR. THOMPSON: I think cross-examination
3 is for the purpose of exploring the testimony offered
4 on direct, testing it, exploring it, examining it.

5 JUDGE HATCHER: Mr. Clizer.

6 MR. CLIZER: I was asking a simple yes or
7 no question. I mean, I believe that he can answer
8 that question, and I believe that his counsel can
9 redirect, if necessary, to expound on it further.

10 JUDGE HATCHER: I agree. Objection
11 overruled. Go ahead.

12 BY MR. CLIZER:

13 Q. So I'm going to repeat the question. Do
14 you agree with the small business adjustment that
15 Mr. D'Ascendis made?

16 A. No.

17 Q. Thank you. I'm going to check at this
18 point, have you received an email? Should be coming,
19 I believe, from a Dr. Geoff Marke.

20 A. I appear to have two emails.

21 Q. All right. Hopefully there's some
22 attachments in those emails.

23 A. Yes.

24 MR. CLIZER: All right. Your Honor, I
25 would like to mark an exhibit. It should be 226?

1 JUDGE HATCHER: So marked.

2 (OPC Exhibit 226 was marked for
3 identification.)

4 BY MR. CLIZER:

5 Q. Mr. D'Ascendis, I'm not sure how these
6 came to you labeled, but this would be the RRR
7 Regulations Focused Water ROEs by Heike Doerr -- I'm
8 not sure I'm pronouncing that correctly -- for
9 February 15th, 2023.

10 A. Well, you called me Mr. D'Ascendis.

11 Q. My apologies.

12 A. Nice guy, but I'm not him.

13 All right. Which -- I'm sorry. Can we
14 repeat the title of the document?

15 Q. This is the S&P Global Report for
16 February 15th, 2023.

17 A. Got it.

18 Q. All right.

19 A. Just so I'm clear, at the top it says
20 Water ROEs trend higher on small deficit?

21 Q. It does. Trying to project for the
22 record.

23 Mr. Walters, I will endeavor to not mix up
24 the names again. Are you familiar with S&P Global
25 reports?

1 A. Yes.

2 Q. Are you familiar with this document?

3 A. I am.

4 Q. You would agree with me that this is a
5 report generally provided by S&P Global to those
6 interested in the investment community with regard to
7 standard rates of return for various utilities, in
8 this case a water utility?

9 A. Yes.

10 Q. And you would agree with me that this is
11 the kind of document that you, yourself as an expert,
12 would rely on in establishing or determining the
13 reasonableness of a rate of return. Is that correct?

14 A. Yeah. These kind of reports serve as an
15 observable benchmark to assess the reasonableness of
16 a -- the estimate cost of equity capital, yeah.

17 Q. And you would agree with me that this says
18 the water utility rate case decisions for 2022 has an
19 average rate award of 9.61 on that front page.
20 Correct? At the bottom of the graph. Not the graph,
21 apologies, the table.

22 A. Yes.

23 Q. Now, I believe that you reference this in
24 testimony. Is that correct?

25 A. I do.

1 Q. But have you seen anything more recent
2 than this?

3 A. I have not actually seen the more recent
4 water report. I've heard mentionings of a 9.4
5 percent.

6 Q. Let's hold that thought.

7 A. Okay. Sorry.

8 Q. That's okay. I would go ahead and mark
9 another exhibit, I believe 227.

10 JUDGE HATCHER: So marked.

11 (OPC Exhibit 227 was marked for
12 identification.)

13 BY MR. CLIZER:

14 Q. If you will, Mr. Walters, if you can find
15 the attachment. It is the S&P Global report for
16 May 9, 2023.

17 A. All right. I've got that open.

18 Q. And you would agree with me, Mr. Walters,
19 that this is a report by the same company as the
20 previous report upon which you relied?

21 A. Yes.

22 Q. And you would agree with me that in this
23 report 2023 the update, it indicates that the
24 percentage ROE on average was 9.4? And that is again
25 at the bottom of the table on the front page.

1 A. Yes. I would agree with that.

2 Q. So you would agree with me that since 2022
3 the average ROE for water utilities in this country
4 have decreased according to this S&P Global report?

5 A. Yeah. It looks like it's decreased by 21
6 basis points.

7 Q. I'm not sure this is necessary, but S&P
8 Global sends out quarterly reports for large
9 utilities like electric and gas. Correct?

10 A. They do.

11 Q. But they don't send out quarterly for
12 water?

13 A. I think it's a less frequent report,
14 although, I mean, this report would indicate that
15 it's been released three months since the last one,
16 so three months are in a quarter so it's, I guess,
17 relatively quarterly. I guess it would also be
18 dependent on how many -- there are less frequent
19 water rate cases so that could be a reason why they
20 don't have as frequent of reports.

21 MR. CLIZER: All right. I will move for
22 the admission of 226 and 227.

23 JUDGE HATCHER: You've heard the motion.
24 Are there any objections?

25 MR. THOMPSON: No objection.

1 JUDGE HATCHER: Hearing none they are
2 both so admitted. That is Exhibit 226 and
3 Exhibit 227.

4 (OPC Exhibits 226 and 227 were admitted.)

5 MR. CLIZER: We'll call those S&P Global
6 for February and May respectively?

7 JUDGE HATCHER: Yes.

8 MR. CLIZER: Thank you.

9 BY MR. CLIZER:

10 Q. Mr. Walters, there's been several
11 discussions regarding net operating losses today. Do
12 you recall those?

13 A. Generally, yes.

14 Q. And would you agree with me that the
15 Company has put forward an argument that effectively
16 it is -- it does not make sense to receive a rate --
17 regulated rate consistent with what OPC and Staff has
18 been proposing because of these net operating losses?

19 A. Generally, yeah, I would agree with that,
20 something along those lines.

21 Q. Were you familiar with the history
22 regarding the Fresh Start loan that was discussed
23 between me and Mr. Thies earlier today? Thies.

24 A. Not as familiar as OPC witness Murray or
25 you and Mr. Thies are.

1 Q. Let's just start at a high level. If a
2 company loans money to itself and then it pays
3 interest on that loan, has the company actually lost
4 money?

5 A. In the grand scheme of things, no, I don't
6 believe they have lost money.

7 Q. And if a company claims the interest that
8 it paid as a loss on its report, its financial
9 reports, you would agree with me that that would
10 overstate the amount that the company actually lost.
11 Correct?

12 A. Yeah, I would agree.

13 Q. Do you have a copy of what has been
14 previously marked OPC Exhibit 22 -- where did my
15 exhibit list go. I just had it. What happened to
16 it. What was --

17 A. Would this have been something sent by
18 Geoff Marke?

19 Q. It was, I apologize. It would be 224
20 although it's probably not marked that way to yours.

21 A. It is not.

22 Q. This would be the 2019 Missouri Public
23 Service Commission Annual Report for Indian Hills.

24 A. Okay. I see it, yeah. For 2019. It is
25 open.

1 Q. And can you turn to page W1 for me.

2 A. W1.

3 Q. It's got an odd numbering system. It
4 starts with regular numbers and then it switches to
5 Ws. So it's about the sixth or seventh page in.

6 A. All right. There's W3, W2. W1.

7 Q. All right. You found it?

8 A. I have.

9 Q. Now, you would agree with me that it lists
10 total revenues at the top of about \$537,000?

11 A. Yes.

12 Q. And lists plant operating expenses at
13 line 7 at \$161,000?

14 A. Yes.

15 Q. So you would agree with me that the
16 revenues being generated by the Company far exceeded
17 the actual cost to operate its plant according to
18 this annual report. Correct?

19 A. Yeah. Based on those two figures, I would
20 agree with that.

21 Q. Now, I ran through this exercise earlier,
22 but I'll just repeat very quickly, you agree with me
23 the net operating income loss at line 23 is 201,273.
24 Correct?

25 A. Yes.

1 Q. And that the income taxed expense --
2 sorry -- interest expense, the interest expense at
3 line 20 is 274,000. Correct?

4 A. Yes.

5 Q. You agree with me that if we remove that
6 interest expense, this company would be making a
7 profit. Correct?

8 A. Yes.

9 Q. Did your analysis take into consideration
10 the fact that the Company had been making interest
11 deductions for a loan it had made to itself?

12 A. I don't -- I mean, in what context? I
13 guess I don't -- I don't think that I -- it did.

14 Q. Mr. Walters, did you consider or listen --
15 did you listen to testimony from Mr. D'Ascendis that
16 identified that whether or not the Company needed
17 more money. Do you recall that?

18 A. Vaguely, yes.

19 Q. And again, I'm going to attempt to
20 paraphrase this. You would agree with me
21 Mr. D'Ascendis suggested that the Company does not
22 request -- need to request additional financing so it
23 makes no sense for them to acquire additional debt
24 financing. Do you agree with me that that's a fair
25 paraphrasing?

1 A. Yeah. I believe he said that the -- I
2 guess at the time when the Company took out the loan,
3 that they did not need any more capital than what
4 they took out, so they limited it to that.

5 Q. Do you agree that that's a reasonable way
6 to determine the capital structure for a utility like
7 Confluence Rivers?

8 A. You know, my recommendations as far as
9 capitalization was concerned was more along the lines
10 of what I've witnessed in my own experience and
11 considered the, you know, the other things laid out
12 in my direct testimony. I don't know that it's an
13 unreasonable method. I don't know that I have a
14 necessary opinion. I think, you know, if they're
15 going through -- I find it hard to believe that if
16 they're in this acquisition phase of acquiring new
17 systems, that they're not necessarily going to need
18 new capital. So I think that they probably, if they
19 were going to go on an acquisition spree, that they
20 certainly could have used the additional debt
21 financing.

22 Q. So you would agree with me that if the
23 Company intends to acquire additional systems, it
24 certainly needs more capital. Correct?

25 A. Yeah. I believe the Company would need

1 external capital to fund acquisitions.

2 Q. Is it your understanding whether or not
3 the Company intends to plan on taking out more debt?

4 A. I don't recall honestly.

5 Q. All right. I'll mark one more exhibit,
6 should be 228C. This is confidential.

7 JUDGE HATCHER: So marked.

8 (OPC Exhibit 228C was marked for
9 identification.)

10 MR. CLIZER: Your Honor, I apologize.
11 Apparently I do not have copies internally. I will
12 have to send those out. This would be the last
13 document, and this would be the CSWR presentation,
14 U.S. Water System's, LLC board of directors. Do you
15 have that?

16 MR. COOPER: Your Honor, I'm -- I guess
17 I'm pausing here to -- I don't know whether it's an
18 objection or not, but without copies to see what
19 Mr. Clizer is showing the witness, I'm at a bit of a
20 loss.

21 JUDGE HATCHER: Mr. Clizer.

22 MR. CLIZER: I want to make sure he just
23 has it first and then I'll -- yes.

24 MR. WALTERS: I don't have something with
25 that title on it.

1 MR. CLIZER: It should be the first email
2 you got.

3 MR. WALTERS: You want me to read the
4 title of the email I got? It says, Explicitly
5 requests U.S. Water Authority --

6 MR. CLIZER: Stop. Stop. Stop. I don't
7 want -- I don't want to go into confidential
8 information.

9 MR. WALTERS: Okay.

10 MR. CLIZER: That is the right document.

11 MR. WALTERS: Okay. Apologies.

12 MR. CLIZER: Now, I do apologize, your
13 Honor, but I need a brief recess that I can go and
14 print several copies of this. I am sorry. If I will
15 explain myself, this is the information that we
16 received from the Company yesterday, so we've kind of
17 been scrambling.

18 JUDGE HATCHER: You're fine. I see that
19 it's 11:48. I'm going to deny your request. I'm
20 going to grant you lunch. Let's come back at 1:00.

21 And here is the schedule that I think we
22 are following. We'll finish up with Mr. Murray. I'm
23 sorry. We will finish up with Mr. Walters. We will
24 go to Mr. Murray. And then we will decide if we are
25 going to go to the flow rate issue. Is Mr. Lyons

1 only available today?

2 MR. WOODSMALL: Yes, your Honor.

3 JUDGE HATCHER: Then we will be going to
4 the flow rate issue this afternoon. Okay. That's
5 lunch. We are off the record.

6 (off the record.)

7 JUDGE HATCHER: Let's go back on the
8 record. We are returning from our lunch break and
9 are continuing in OPC's cross-examination of Staff
10 Witness Walters. Counsel.

11 BY MR. CLIZER:

12 Q. Mr. Walters, are you there?

13 A. Sorry, yeah, I'm here. Can you guys hear
14 me?

15 Q. I can hear you. Thank you very much. As
16 I will endeavor to make this last part relatively
17 quick.

18 A. Sure.

19 Q. Before I actually get into what I was
20 originally going to ask you about, because that will
21 require going en camera, I'm actually going to stick
22 with just the last bit of things that won't.

23 Mr. Walters, you've testified regarding
24 the capital structure that was awarded to the Company
25 in the cases for Kentucky and Louisiana. Do you

1 recall that in your testimony?

2 A. Yes, I do.

3 Q. You did not mention in your testimony the
4 ROEs that were awarded in those cases, did you?

5 A. I don't believe so.

6 Q. Are you familiar with what their return on
7 equities that were awarded in those cases are?

8 A. I believe the awarded ROE in Kentucky
9 was 9.9 percent relative to the Company's request
10 of 11.8. I believe the -- I'm not -- I can't say for
11 certain what the Louisiana one was. I thought I
12 heard someone mention earlier today that it was 9.5,
13 but I could be mistaken.

14 Q. That's okay. It's actually contained in
15 an attachment to Mr. Murray's testimony, so I will
16 put that in briefing. Thank you though.

17 Now, we were attempting to discuss a
18 confidential document that I had sent to you. Do you
19 have that document up? This would be the
20 presentation from CSWR to U.S. Water Systems. It has
21 a long name in the title, but I don't want you to
22 read that name.

23 A. Sure. Yes. I have that file open.

24 MR. CLIZER: Now, I cannot recall if I
25 moved to mark this exhibit or not. In any event, I

1 would like to mark Exhibit, I believe to be 229 at
2 this point. Nope. Was it 228?

3 MR. THOMPSON: 228.

4 JUDGE HATCHER: 228.

5 MR. CLIZER: Like I said, I only have
6 three now. I will move to get you the rest as soon
7 as possible.

8 JUDGE HATCHER: Do you have one for
9 yourself?

10 MR. CLIZER: I have one for myself. Thank
11 you, sir.

12 BY MR. CLIZER:

13 Q. I'm going to attempt to lay the foundation
14 without going en camera. I'll do so slowly and to
15 allow for an objection if I accidentally stray too far.

16 Mr. Walters, you would agree with me that
17 this is a presentation Central States Water Resources
18 provided to U.S. Water Systems, LLC Board of
19 Directors?

20 A. Yes.

21 Q. And you are familiar with whom U.S. Water
22 Systems, LLC is?

23 A. Generally, yes.

24 Q. You would agree with me that they are the
25 owner of CSWR, Central States Water Resources?

1 A. Yes.

2 Q. And they own both the LLC and the Inc.
3 version, do they not?

4 A. I believe so. I'm looking at the
5 corporate entity organizational chart that was filed
6 in Mr. Cox's testimony. And the LLC version is
7 directly underneath U.S. Water whereas Central States
8 Water Resources, Inc. is up horizontal or lateral.
9 But generally I would agree with you, yes.

10 Q. Would you find page 65 of this document
11 for me. Actually we'll start on page 64.

12 A. I think I'm there. I apologize, the PDF
13 version of this is -- some of the font is hard to
14 read.

15 Q. Understandable. It would be the slide
16 titled, CSWR's proposed use of third-party debt.

17 A. I'm there.

18 Q. Again, without going into any of the
19 information which is confidential, you would agree
20 with me that this slide outlines the Company's
21 proposal for future debt?

22 A. Can I take a moment to review this please?

23 Q. Of course. Please do so.

24 A. And just so I answer honestly, could you
25 repeat the question.

1 Q. You would agree with me that this slide is
2 outlining Central States Water Resources' proposed
3 use of third-party debt?

4 A. I would agree.

5 Q. And if you flip to the next page on 65, it
6 outlines the specific information with regard to the
7 state of Missouri. Is that correct?

8 A. Yes.

9 MR. CLIZER: And at this point, Judge, I
10 think I've hit the limit and I would like to go on
11 camera very briefly.

12 JUDGE HATCHER: Okay. Before we do that,
13 the Presiding Officer would like to review the
14 Commission's stance towards confidential
15 information, acknowledging that confidential
16 information is necessary to run these businesses but
17 also the Commission's strong preference that
18 discussions and the evidentiary hearing remain open
19 to the public.

20 Is there any way that, Mr. Clizer, you
21 could ask the question pointing to a row and column
22 and allow the commissioners to read the confidential
23 document while the witness confirms? If not --

24 MR. CLIZER: Let me try.

25 JUDGE HATCHER: Okay.

1 MR. CLIZER: Let me make a -- I'll make a
2 good faith effort. Let's see what I can do.

3 BY MR. CLIZER:

4 Q. All right. I want to direct your
5 attention to the bottom of the table labeled Debt
6 Covenants. Do you see that, Mr. Walters?

7 A. I do.

8 Q. And would you agree with me that line 2
9 identifies what the Company's projected total debt-to
10 capitalization ratio is moving out to 2026?

11 A. Yes.

12 Q. I'm working on it, hold on a second.
13 You would agree with me that the Company
14 appears to be maintaining a consistent or plan to
15 maintain a consist debt-to-capitalization radio --
16 ratio moving out to 2026?

17 A. Relatively, yes.

18 Q. Without divulging the numbers in there,
19 you would agree with me that the ratio that they are
20 proposing moving forward would be imprudent?

21 JUDGE HATCHER: Mr. Clizer, did you say
22 improvement?

23 MR. CLIZER: Sorry, I meant imprudent.

24 JUDGE HATCHER: Oh, imprudent. Thank
25 you.

1 BY MR. CLIZER:

2 Q. And I will repeat the question just for
3 the sake of the witness. You would agree with me,
4 without divulging the numbers themselves, that
5 maintaining the debt-to-equity ratio that is
6 portrayed here through 2026 would most likely be
7 imprudent?

8 A. Yes. And I don't know if you want me
9 to provide any kind of context as to why, but I
10 think that I would agree with you that that would
11 not be -- or that would be an imprudent
12 capitalization.

13 MR. CLIZER: I would certainly like to
14 have him explain why, but I am not sure how that's
15 going to work without going en camera unless
16 Mr. Walters -- Judge, help me out here.

17 JUDGE HATCHER: If Mr. Walters answered a
18 hypothetical -- if Mr. Walters gave you a more
19 academic answer, would that be the answer that you
20 need to cite in your briefs? But we can go en
21 camera, that's fine.

22 MR. CLIZER: Can we just go en camera
23 very briefly? I apologize. I know it's the
24 Commission's preference.

25 JUDGE HATCHER: No, that's fine. We gave

1 it a shot.

2 I'm looking to my technical director for
3 some guidance here. We are now en camera?

4 IT DIRECTOR: We are, yeah. We're en
5 camera to the public. Webex can be heard.

6 (En camera proceedings, pages 105 to 109
7 are in a separate transcript.)

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1 JUDGE HATCHER: We are now livestreaming
2 and back. Mr. Clizer.

3 MR. CLIZER: I always forget to do this,
4 I apologize. I will move for the admission of the
5 exhibits with --

6 JUDGE HATCHER: I've got you. Is there
7 any objection to Exhibit 228 Confidential. Hearing
8 none, it is so admitted.

9 (OPC Exhibit 228C was admitted.)

10 JUDGE HATCHER: Yes, Mr. Cooper.

11 MR. COOPER: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. COOPER:

14 Q. Mr. Walters, I'm going to try to do this I
15 guess without going en camera, but I'm going to
16 follow up on the exhibit that you probably still have
17 in front of you, the 228C. Do you still have that
18 up?

19 A. Yes. Yes. The one that we just went
20 over?

21 Q. Yes, exactly.

22 A. Yes, I've got it.

23 Q. Mr. Walters, you have -- I assume you have
24 no background coming into this questioning as to what
25 this document represents. Is that correct?

1 A. Not entirely, no.

2 Q. So other than having read the title to the
3 document, I mean, you really don't what purpose
4 precisely it was prepared for. Correct?

5 A. Not exactly, no. That would be fair.

6 Q. And given the date of the document, May
7 of 2022, you would agree with me that it was a
8 document that appears to have been created prior to
9 the issuance of the current CoBank debt. Correct?

10 A. Yeah. I believe that was December '22, so
11 yeah, I would agree with that.

12 Q. And so would it be reasonable to assume
13 that this is a planning document?

14 A. Having not reviewed this document in its
15 entirety, yeah, I think that that would be relatively
16 a fair assessment of what it might be.

17 Q. Right. And a planning document that would
18 have been created at a moment in time. Correct?
19 Because it reflects 2021 numbers and as well as
20 some 2022 numbers that wouldn't have been even
21 complete at that point. Correct?

22 A. What would not have been complete, I'm
23 sorry?

24 Q. Financial year 2022 would not have been
25 complete as of May of 2022.

1 A. Thanks for the clarification. I would
2 agree with that.

3 Q. And given that, and again, given that this
4 preceded the current debt, is it reasonable that this
5 mapped out projections related to that, that debt
6 that was being considered at the time?

7 A. I don't know that I completely grasp your
8 question. Could you repeat that for me please.

9 Q. Well, we've talked about the fact that the
10 document is dated prior to the issuance of the
11 current debt that the Company has. Correct?

12 A. Correct.

13 Q. So at that point in time they were really
14 working with no third-party debt, no third-party
15 debt. Correct?

16 A. Yeah. I believe so, yeah.

17 Q. And so step one is to figure out what the
18 new debt, if it becomes new debt, would look like on
19 a going-forward basis. Correct?

20 A. Step one relative to? I mean --

21 Q. To the future.

22 A. -- to the overall planning process?

23 Q. Yeah, sure.

24 A. Yeah, I think that's reasonable.

25 Q. Okay. So is there any representation on

1 here that that would be the only debt that's ever
2 issued by the Company?

3 A. I can't make that determination from --
4 from the particular page that we were reviewing.

5 Q. Yeah. So you don't know one way or the
6 other. Correct?

7 A. Correct.

8 Q. Mr. Walters, are you aware that the
9 Company's debt service on the debt that it has now is
10 approximately \$600,000 a year?

11 A. To clarify, that's principal and interest,
12 correct.

13 Q. We don't believe it is, no. We would
14 represent that it's interest only.

15 A. Could you point me something to that? I
16 don't recall off the top of my head what the
17 Company has --

18 Q. Let -- well, let's work with this because
19 the answer to your question is going to be no, I
20 can't do it right at this moment. But let's assume
21 for a hypothetical that it's \$600,000 of interest.

22 A. Okay.

23 Q. Okay. And if we look at this document and
24 the projections -- well, let me back up. Is EBITDA,
25 is that used sometimes to be a representative or a

1 way to check a company's ability to cover its debt
2 service?

3 A. Yeah. It's one of core financial -- it's
4 used as one of the core financial metric components
5 by S&P in its ratings assessments.

6 Q. And --

7 A. Specifically the metric they use is debt
8 to evenness, so total debt over adjusted EBITDA.

9 Q. And if we look again at this same page,
10 there's an EBITDA line. Correct?

11 A. Yes.

12 Q. And there is a number for, at least
13 projected, for 2022 on that EBITDA line. Correct?

14 A. Yes.

15 Q. Would that number be greater than
16 or lesser than the hypothetical debt service
17 of \$600,000?

18 A. Less than.

19 Q. And a fair amount less than. Correct?

20 A. Without divulging any more information,
21 yes.

22 Q. Okay. Back to some of your earlier
23 questions. You had made mention that Confluence
24 Rivers was not the only utility acquiring small,
25 distressed systems. Correct?

1 A. I believe, I think you might be
2 referencing the conversation around a report that
3 came out sometime in July that I referenced as the
4 acquisition of distressed systems being the status
5 quo and the trend going forward.

6 Q. Correct.

7 A. Okay.

8 Q. Are you aware of any other utilities that
9 are exclusively acquiring small, distressed systems?

10 A. No, I am not.

11 Q. And in terms of the state of Missouri, are
12 you aware of any other entities acquiring small,
13 distressed systems in the state of Missouri within
14 the last four or five years?

15 A. I can't say that I'm exactly familiar with
16 the acquisitions of all the -- the water utilities in
17 the state, so no, I can't say for certainty whether
18 they have or haven't.

19 Q. You were asked several questions about the
20 Indian Hills entity. Correct?

21 A. Well, the -- the annual report I believe,
22 yeah.

23 Q. The annual report associated with that.
24 Are you aware that prior to acquisition by the
25 Company, that that was an entity where toilets

1 wouldn't flush on the weekends, that DNR ultimately
2 indicated, because of the lack of pressure in that
3 system, it should have been on a boil order for 20
4 years?

5 A. I don't know -- I don't know that I
6 remember the specifics of how degraded the system
7 was. I know that it was a distressed system. I
8 would not disagree with that.

9 Q. And the debt that I think you were -- you
10 were focused on in that case, is it your
11 understanding that that debt was debt that was
12 approved by the Commission, the Missouri Commission?

13 A. I don't recall the conversation about the
14 debt. Can you point me to something to --

15 Q. Well, I think there were some questions
16 regarding the interest that would have been reflected
17 on the annual report that you were looking at. Does
18 that ring a bell?

19 A. Yeah. I think as -- I think it was framed
20 or presented along with the amount of interest
21 relative to the net operating losses accrued. Is
22 that the conversation?

23 Q. I think so.

24 A. Okay.

25 Q. And would you -- is it your understanding

1 though that the interest that is being discussed
2 resulted from debt that was approved by the
3 Commission?

4 A. Yeah. Yes. I -- I think I agree with
5 that.

6 MR. COOPER: That's all the questions I
7 have at this time.

8 JUDGE HATCHER: That'll take us to
9 commissioner questions. We'll pause for a minute.

10 COMMISSIONER HOLSMAN: No questions,
11 Judge.

12 JUDGE HATCHER: Thank you, Commissioner
13 Holsman. Okay. The Bench has no questions. That
14 will take us to redirect.

15 MR. THOMPSON: Thank you, Judge.

16 REDIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q. We've heard a long cross-examination and I
19 wanted to circle around to the beginning to make sure
20 that some points didn't get lost in the shuffle.

21 You testified that if the Commission set
22 the ROE at Staff's recommended figure, that there
23 would be sufficient cash flow to service Confluence's
24 debt?

25 A. Yeah. Yes, that's correct. I prepared

1 a -- you know, after filing surrebuttal testimony, I
2 prepared a credit metrics analysis based on the S&P
3 methodology that considered Staff recommendations
4 based on rate base depreciation and expense and then
5 my overall recommended rate of return. And it was --
6 produced metrics that would support a rating anywhere
7 between a BBB-plus and A-plus.

8 Q. And so that's also true if the Commission
9 selected Public Counsel's recommended figure which is
10 somewhat higher than Staff's?

11 A. Well, the -- their ROE is somewhat higher
12 than Staff's, but the overall rate of return is
13 somewhat lower. In any event, you know, I agree with
14 the metrics, in theory, that Mr. Murray put together.
15 It's very similar to the ones that I performed on my
16 own. But like I said, I think he actually
17 understated what the rating would actually be because
18 he assessed it against a -- the higher volatile
19 metric that is used for mostly electric and
20 multi-utilities. But yeah, the metrics that came out
21 of either analysis would support a very strong credit
22 rating.

23 MR. THOMPSON: That's all the questions I
24 have. Thank you.

25 JUDGE HATCHER: Thank you, Mr. Walters.

1 Thank you, Mr. Walters. You can go ahead and turn
2 your video off. You are dismissed from the virtual
3 witness stand subject to recall by the Commission.

4 We will move on to the Office of Public
5 Counsel calling up witness Mr. Murray. And
6 Mr. Murray, whenever you're ready.

7 DAVID MURRAY

8 The witness, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 JUDGE HATCHER: Thank you, sir. Have a
12 seat. Mr. Clizer.

13 BY MR. CLIZER:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Could you please -- could you please state
17 and spell your name for the record.

18 A. David Murray, last name spelled
19 M-u-r-r-a-y.

20 Q. And have you prepared or caused to be
21 prepared direct testimony in this case which has been
22 premarked as 209 and 209C for the confidential
23 version, rebuttal testimony that's been
24 premarked 210 and 210C for the confidential
25 version, and surrebuttal testimony that's been

1 premarked 211, 211C --

2 A. Yes.

3 Q. -- for the confidential version?

4 And are the answers that you gave in that
5 testimony true and correct to the best of your
6 knowledge and belief?

7 A. Yes.

8 Q. And do you have any corrections to make?

9 A. Yes, a couple.

10 Q. Hold on. I will go ahead and mark OPC
11 Exhibit 229 for Mr. Murray's errata sheet.

12 JUDGE HATCHER: So marked.

13 (OPC Exhibit 229 was marked for
14 identification.)

15 MR. MURRAY: You want me to go ahead and
16 read those into the record?

17 MR. CLIZER: Hold on.

18 JUDGE HATCHER: Mr. Clizer's going to
19 hand those out and probably ask you to read them and
20 then we will take a quick poll of everyone and enter
21 it into the record.

22 BY MR. CLIZER:

23 Q. Mr. Murray, is this document the errata
24 sheet to your testimony?

25 A. Yes, it is.

1 Q. And does this document outline the changes
2 that you believe need to be made to your testimony?

3 A. It does.

4 Q. Can you please walk through what those
5 changes are?

6 A. Yes. In my direct testimony on page 2,
7 line 2 I indicate that I recommend and authorized
8 ROE of 9.65 percent based on a range of 9.1 to 9.9.
9 The 9.1 should be corrected to 9.25. And
10 corresponding -- correspondingly, the same thing in
11 my rebuttal testimony on page 2, line 4, I
12 misspecified the range there as well. It said 9.1
13 to 9.9. Needs to be changed to 9.25 to 9.9.

14 Q. Are there any other changes that need to
15 be made to your testimony?

16 A. No.

17 Q. So if I were to ask you the same questions
18 posed in your testimony with re -- taking into
19 consideration these changes, would your answers be
20 the same or substantially similar to today?

21 A. Yes.

22 MR. CLIZER: All right. Your Honor, I
23 will move for the admission of 209, 209C, 210, 210C,
24 211, 211C, and 229 which are respectively the direct
25 testimony, rebuttal testimony, surrebuttal testimony

1 in public and confidential forms and the errata sheet
2 of Mr. David Murray.

3 JUDGE HATCHER: You've heard the motion.
4 I'm not going to repeat the numbers. We will take
5 all of the motions together as one. Are there any
6 objections? Hearing none, all of these exhibits are
7 admitted onto the hearing record.

8 (OPC Exhibits 209, 209C, 210, 210C, 211,
9 211C, and 229 were admitted.)

10 MR. CLIZER: Thank you, your Honor. I
11 tender for witness for cross-examination.

12 JUDGE HATCHER: Mr. Thompson.

13 CROSS-EXAMINATION

14 BY MR. THOMPSON:

15 Q. Good afternoon, Mr. Murray.

16 A. Good afternoon, Mr. Thompson.

17 Q. On page 5, line 4 of your direct
18 testimony, you identify a \$7 million CoBank loan. Do
19 you see that?

20 A. Yes, I do.

21 Q. Why is that loan amount different from
22 the \$7,066,268 loan balance that Mr. Thies included
23 in his work papers supporting Confluence's revenue
24 requirement?

25 A. The Company used a test year of June, I

1 believe June 30th, 2022. And yeah, that amount was
2 very similar to what the, you know, the \$7 million
3 CoBank loan. I had not realized at that time that
4 was still the balance on Confluence's per-books
5 balance sheet of the Fresh Start venture loan
6 contract. It was seven -- and that's what Mr. Thies
7 had reflected in his recommended capital structure.

8 Q. Are there any obligations remaining
9 related to the Fresh Start loan contracts?

10 A. I mean, there's aftereffects, but there's
11 no -- there's no -- at least in Missouri, there's no
12 ongoing interest expense associated with the Fresh
13 Start Venture contract.

14 The Fresh Start Venture contract was --
15 was refinanced. I mean, I take issue with having
16 this called a refinancing because it was, you know, a
17 loan to, you know, the same parties, you know, the
18 owner and the investor were, you know, the same
19 folks. But the -- I guess the remaining effects of
20 that Fresh Start financing contract is the
21 accumulative amount of interest expense that was
22 charged to Hillcrest utility -- Hillcrest, Raccoon
23 Creek, Indian Hills and Elm Hills from 2016 to 2022.
24 And I determined that amount to be about five and a
25 half million dollars.

1 So while there's no ongoing interest
2 expense charged in -- you know, the Commission
3 dismissed this contract in 2017, so even, you know,
4 since 2017 that contract has been not put into rates
5 other than for previous two cases, Raccoon Creek and
6 Hillcrest, but point being is -- is that the
7 remaining effect has to do with, you know, the net
8 operating losses that's been debated in this case.

9 Q. And how did the Fresh Start loan contracts
10 impact the implied profitability of the legacy
11 utility operating companies?

12 A. Well, it made them look, you know, like,
13 unprofitable. And that's exactly why, whenever I did
14 my credit metric analysis and looked at the financial
15 performance of the utility operating companies, my
16 calculations just backed out the interest, the debt
17 to -- not the debt service because the interest is
18 only going -- you know, flows through the income
19 statement. But backed out the interest on the Fresh
20 Start contract to get us kind of at a base as to what
21 their earnings were at a, you know, just assume a
22 hundred percent equity, because essentially that's
23 how it should have been viewed since it was, you
24 know, owned by the same folks that owns CSWR.

25 So in my opinion, in order to get an

1 accurate reflection of the true financial performance
2 of these utility companies, the legacy utility
3 operating companies, you absolutely have to back out
4 that 14 percent interest rate because, you know, that
5 was deemed to be an illegitimate self-dealing
6 contract.

7 Q. Okay. Let's shift gears a little bit.
8 Did you use -- now, in your analysis you used the
9 discounted cash flow method. Is that correct?

10 A. Yes.

11 Q. How many versions?

12 A. I just used the multi-stage DCF.

13 Q. And in the multi-stage what growth rate
14 did you use for the first stage?

15 A. There is no specific growth rate in the
16 first stage. What I did, and this has to do with
17 being able to access more detailed analyst
18 information through S&P Global, and there have been
19 benefits to the advancement of making data more
20 economically available to government workers. In the
21 past you would have had to have access to Bloomberg
22 which -- Bloomberg Terminal, which is, you know,
23 prohibitively expensive.

24 And so the point being is -- is that
25 allowed me access to equity analysts discreet

1 estimates of dividends per share, earnings per share,
2 for as long as possible, which typically, you know,
3 carries out to 2027, so about five years. And so
4 there's no -- you know, there's no implicit growth
5 rate. You could calculate a growth rate, but that
6 was not my concern. My concern was to capture
7 analyst consensus estimates of what dividends per
8 share, earnings per share were for the companies for
9 each -- even the first two quarters of -- or the last
10 two quarters of this year, but then annually after
11 that, until though discreet estimates were no longer
12 available.

13 Q. Okay. Now, you're familiar with
14 Mr. D'Ascendis's direct testimony. Is that correct?

15 A. I am.

16 Q. And what growth rate did he use in the
17 discounted cash flow?

18 A. I'd have to review. I don't have it
19 committed to memory.

20 MR. CLIZER: Would you like me to provide
21 him a copy?

22 MR. MURRAY: I have it up here.

23 And he did a couple versions. Correct?

24 A constant growth, a sustainable growth, and a multi-
25 stage.

1 BY MR. THOMPSON:

2 Q. So three different ones?

3 A. I believe so. The multi-stage he used a
4 terminal growth rate of 4 percent. That's the
5 constant growth stage.

6 And in the constant growth DCF, looks like
7 he had an average sustainable growth rate of 5.99
8 percent. Then he also did a constant growth using
9 just an average of five year -- of analyst-projected
10 earning per share growth over -- compound annual --
11 annual growth over the next five years, which I do
12 not agree with by the way -- but he used a 6.72
13 percent.

14 Q. In that constant growth model, the growth
15 rate is supposed to go out to perpetuity. Isn't that
16 correct?

17 A. In a constant growth, yes.

18 Q. And you said you don't agree with what he
19 did. Why is that?

20 A. Well, because -- yeah. He actually did
21 something, you know, pretty similar to what a lot of
22 company witnesses do is I think Mr. D'Ascendis did it
23 as well, is he just took an average of the five year
24 compound annual growth rate consensus estimates of
25 equity analysts of earnings per share. And that's

1 just a short-term growth estimate and that has no
2 reflection of what you would expect on a a perpetual
3 basis. That can ebb and flow.

4 So I just don't -- I do not agree. For
5 instance, he has 11.7 percent for California Water
6 Services. What -- what his -- what his analysis
7 implies is that you'll get a -- that you're going to
8 achieve 11 percent -- 11.7 percent compound annual
9 gain in your stock price every year forever into the
10 future. I mean, if that's true, then sign me up.

11 Q. So is it your opinion that his results
12 were, therefore, too high?

13 A. In a constant growth DCF, yes. The
14 constant growth DCF, correct.

15 Q. How about his sustainable, do you agree
16 with the results he achieved using that model?

17 A. Again, that 6 percent growth is -- is
18 higher than what, you know, what is sustainable in
19 perpetuity.

20 Q. How about the multi-stage?

21 A. The multi-stage is more similar to -- he
22 does it in a different fashion, but his perpetual
23 growth is in line with specifically what I see
24 investors typically use for a perpetual growth rate
25 when employing a similar analysis.

1 Q. So do you think that the result he
2 achieved using that model is reasonable?

3 A. I mean, I disagree with what this cost --
4 he has an average and a median, he has a water
5 utility. He did -- okay. He had gas companies in
6 his proxy group, which I -- actually gas companies,
7 natural -- excuse me -- natural gas distribution
8 companies have been trading at a bit of discount.
9 They've kind of been out of favor due to the concerns
10 about, you know, environmental transition issues,
11 climate issues, et cetera. But yeah. So if you --
12 if you remove the gas companies, I believe his water
13 utility cost to equity is within the range of
14 reasonableness.

15 Q. Okay. Now, did Mr. D'Ascendis use a risk
16 premium analysis?

17 A. Many, many, many different risk premium
18 analysis.

19 Q. And let's just cut to the chase there. Do
20 you agree with the results he achieved using those
21 models?

22 A. No. No.

23 Q. Do you think that they are unreasonably
24 high?

25 A. Yes. Some are -- some are totally

1 irrationally high.

2 Q. How about the capital asset pricing model,
3 did he use that?

4 A. Yes. And -- and that contemplates a risk
5 premium as well and uses the same type of methodology
6 to estimate his risk premium, which, I mean, in some
7 case he projects the S&P 500 will have a constant
8 annual return of 16 percent forever into the future,
9 which like I said, just -- just not rational.

10 Q. So you don't agree with the results he
11 achieved using that model either?

12 A. No. Those were bad inputs.

13 MR. THOMPSON: Thank you. No further
14 questions.

15 JUDGE HATCHER: Mr. Cooper.

16 CROSS-EXAMINATION

17 MR. COOPER: Thank you, your Honor.

18 BY MR. COOPER:

19 Q. Mr. Murray, did I hear you correctly that
20 you referred to the Fresh Start loan as illegal?

21 A. Illegitimate.

22 Q. Illegitimate. Okay. All right. Working
23 with that, would you agree with my earlier questions
24 to Mr. Walters that -- well, the agreement or the
25 loan agreement was approved by the Commission.

1 Correct? Or maybe there's more than one, but -- but
2 the Fresh Start agreements were approved by the
3 Commission; otherwise, the Company could not have
4 entered into those agreements. Correct?

5 A. That's correct.

6 Q. Okay. Do you have in front of you OPC
7 Exhibit 227 by chance?

8 A. Can you please tell me what the title is?

9 Q. Yeah. That's the RRA regulatory focus
10 document that includes 2023 numbers.

11 A. I'm sorry. I do not have a copy in front
12 of me.

13 Q. Your counsel's going to provide you one it
14 appears. You have that in front of you?

15 A. I do.

16 Q. Now, looking at those ROEs from the time
17 period represented on that page, there's one that
18 kind of sticks out which is the Aquarion Water
19 Company of Connecticut ROE. Correct?

20 A. Well, it's the lowest, yes. It's 8.7
21 percent.

22 Q. Yeah. Whereas if I compare, you know, the
23 ROEs between, oh, the prior report, Exhibit 226 to
24 everything else on 227 other than the Aquarion Water
25 ROE, they generally track; they seem to be in a

1 fairly consistent range. Would you agree with that?

2 A. The mid nines. I mean, yeah, there's the
3 highest of 9 point -- I mean, it speaks for itself.

4 Q. Yeah. Yeah. Do you know by chance what
5 was going on with Aquarion Water of Connecticut?
6 Have you looked into that?

7 A. I'm just generally familiar from, I think,
8 attending the SRFA conference. I think there was a
9 commissioner there from Connecticut and I, you know,
10 heard people complaining about, oh, we got a
11 low-authorized ROE in Connecticut. And, yeah, it --
12 there was some rumblings about, you know, maybe some,
13 you know, I don't know if they adjusted it due to
14 service issues. I don't recall the details.

15 Q. But you had some information that there
16 was -- there was more going on there, right, in terms
17 of how they landed at 8.7 percent ROE than just a
18 standard?

19 A. Yeah. There's always more details to all
20 these numbers.

21 MR. COOPER: I don't have any further
22 questions, your Honor.

23 JUDGE HATCHER: Thank you. That'll take
24 us to commissioner questions. Chairman Rupp.

25 CHAIRMAN RUPP: I just have one.

1

QUESTIONS

2

BY CHAIRMAN RUPP:

3

Q. Good afternoon, Mr. Murray.

4

A. Good afternoon.

5

6 Q. You've testified in front of us many
7 times. And, you know, there's usually a general
8 theme of, you know, the Company has their witnesses
9 that come in with the higher ROE than Staff and OPC.
10 And I've heard you talk about the constant growth
11 assumptions in various different cases. Is there
12 anything in this particular case of how the Company
13 presented their information that is overtly different
14 than most other companies when they come in and
15 present their witnesses and arguments that tend to
16 always result in a higher ROE?

16

17

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25

A. No. It's -- it seems to be pretty
standard boilerplate and that's rate of return. I
mean, I don't want to minimize -- I feel like I've
gone into, you know, some of details of the utility
operating companies and trying to get into the
specifics of CSWR's companies. But, yeah. By and
large, I mean, we have consultants that are going all
over the country. How much time do you have to get
into the details. So yeah, it does seem like they're
pretty standard and they stick to the same approaches

1 over and over and over.

2 CHAIRMAN RUPP: Okay. Thank you.

3 COMMISSIONER HOLSMAN: Judge, I have a
4 question.

5 JUDGE HATCHER: Yes, Commissioner
6 Holsman.

7 COMMISSIONER HOLSMAN: Thank you.

8 QUESTIONS

9 BY COMMISSIONER HOLSMAN:

10 Q. Can you tell me what you think the
11 national average ROE is? We've heard 9.4 to 9.6. In
12 your estimation, what is the national average?

13 A. Well, I mean, actually I -- excuse me. I
14 tried to -- and I put this in my testimony. I'm
15 trying to provide guidance because, yeah, you're
16 talking to a person that has, you know, that has been
17 around for a while and done this probably longer than
18 I should and has been told that, yeah, your -- your
19 return needs to be higher or lower, whatever, you
20 know, the parties are too far apart. You know, I'm
21 going ten years ago where the Chairman Davis at the
22 time said, We need people to get closer, this is
23 ridiculous.

24 So, but anyway, so, but I understand and
25 that's, you know, the zone of reasonableness, I

1 went -- I went through that. That happened in 2004
2 in Missouri Gas Energy case. That's when that was --
3 that's when that was established, plus or minus 100
4 basis points and it was upheld by the appeals court.
5 But anyway. And it's been cited consistently.

6 So, you know, that being said, that's
7 why, I mean, I am very, you know, confident that the
8 cost of equity is lower than allowed returns. And
9 it's not just my opinion; it's based on talking to
10 the investment community and reviewing their
11 analysis. And they're the ones that advise on
12 stocks, so, I mean, I think it's a little arrogant of
13 us to say that we think we know more than the folks
14 that are advising investors. That's my opinion.

15 But anyway, so that's why when it comes
16 down to the zone of reasonableness, I realize I need
17 to provide you, the Commission, with some information
18 to help you because I know this is something that you
19 are always asking about other states. And so water
20 is definitely a little sparse with their decisions.
21 And so on page 22 of my direct testimony I actually,
22 you know, dive into what the waters, which we've
23 already discussed, the 9.4 in 2023, 9.6 for 2022.
24 But very few decisions.

25 So, you know, I just -- as people know,

1 ROE's not -- you know, it's as much of an art as
2 there is a science. So when it comes down to it, you
3 know, wanting to have some more robust data, I just
4 looked at what the electric and gases were too which
5 have many more cases. And their averages were also
6 right about 9.6. So I just -- and this is what I
7 specifically say in my testimony. I recommend the
8 Commission use an allowed ROE of approximately 9.6 as
9 a starting point after taking into consideration not
10 just water cases, but gas and electric because it's
11 more robust; there's more data there. And so
12 that's -- that's -- that's how I, you know. That's
13 my recommendation if you were going to look at --

14 Q. So within that -- within that zone of
15 reasonableness, we're looking at 8.5 to 10.5
16 approximately?

17 A. I recommended 8.6 to 10.6 because I said,
18 you know, there's not enough data on the water
19 utilities because it was 9.4 in 2023 and 9.6 in 2022.
20 Didn't quite make sense because, yeah, electric and
21 gas had come up a little bit and there's a lot many
22 more electric and gas cases that are decided to the
23 extent they're released quarterly. And so I just
24 said I think 9.6 makes sense.

25 Q. Okay. Let me kind of ask a similar

1 question to the chairman, but maybe a slightly
2 different way. Do you -- first off, how many other
3 companies in Missouri and outside of Missouri do you
4 have experience with that have this type of business
5 model where you're buying distressed systems and
6 you know you're going to have a lag in normalizing
7 the rates before you come in for a rate case? How
8 many -- and so we've heard testimony that there may
9 not be profit for multiple years into the future.
10 How many companies in the country have this business
11 model that you're aware of?

12 A. You know, it's very few as far as, you
13 know, making it their primary business model. I
14 mean, Missouri-American has acquired distressed
15 systems, but yes, they're a very large company and
16 they just absorb them. This is -- this is CSWR's
17 business model. So yeah, I'm not aware of a company
18 that this is their primary business model.

19 Q. Do you think that that business model from
20 a policy perspective, mutually exclusive of any
21 particulars in this rate case, has inherently more
22 risk associated than a business model that is going
23 after performing systems?

24 A. Well, and that's -- yeah. You ask a great
25 question. And I thought that was a -- you know,

1 obviously when -- when CSWR first, you know -- I say
2 CSWR; I think that's their -- that's their doing
3 business as name, there's been some confusion on
4 that. But CSWR, you know, came in and filed its
5 first rate case in 2016 for Hillcrest. And, you
6 know, at that time, I mean, a lot of were, you know,
7 concerned about, you know, this is something that's
8 going to require a significant amount of investment,
9 customer bills are going to go up tremendously, you
10 know, is -- is the cash flow going to follow, is the
11 financial performance going to follow.

12 And that's why I went in and evaluated
13 Hillcrest and the Raccoon Creek and Indian Hills
14 credit metrics. And -- and what I -- and after
15 backing out that, you know, what I considered to be
16 an illegitimate Fresh Start contract, you know, I
17 found that the credit metrics of these rehabilitated
18 systems are -- are consistent with at least an
19 investment-grade credit rating, BBB or higher. So
20 that's why I did that. Because we have experience.
21 They've done it. And I don't think there's, you
22 know, really any reason -- I mean, what better
23 experience to look at than the utility operating
24 companies that have already gone through this, the
25 legacy companies that is. And that's in my

1 testimony.

2 Q. Educate me on the credit rating system.
3 What is the highest rating that a company can
4 achieve?

5 A. A company, I guess there are companies
6 with AAA. I'm trying to -- I can't remember, but
7 there's just a handful. But AAA is the highest, the
8 highest rating you can achieve. Most utilities, I
9 mean, electrics are almost, you know, average of
10 about BBB. You know, gas at one time used to be
11 about, you know, an A-minus. Waters are typically
12 A-minus to A.

13 Q. And so in your testimony, if 9.6 was
14 adopted, they would have access -- or they would have
15 the capability of servicing their debt to get them to
16 a BBB. Is that correct?

17 A. For the systems that are -- that are
18 subject to this rate case, yes. And that's what I'm
19 focused on are the systems that are subject to this
20 rate case.

21 Q. Okay. And then that could potentially
22 affect cost to capital in the future, whatever that
23 rating is, you know, could potentially affect the
24 ratepayers going forward if cost of capital becomes,
25 you know, higher because of that rating. Is that

1 accurate?

2 A. Well, since they -- since Confluence
3 executed a loan with CoBank, CoBank does its own
4 credit analysis. And I didn't find anything in
5 their -- in their loan agreement or the analysis or
6 correspondence they had with the Company that
7 indicated they would charge anything other than what
8 their typical, you know, margin is. I can't remember
9 if they used a secured overnight financing rate, but
10 it's 6.6 percent. I mean, I did not see anything
11 that indicated they would charge any more than 6.6
12 percent if they took the full amount of debt that was
13 in their financial covenants.

14 So my answer is yes, I just -- I don't
15 know. It's up to CoBank, and I don't think they look
16 to -- I mean, these companies are not rated. These
17 are our assessments. CSWR does not have a credit
18 rating nor does its utility operating companies.

19 Q. Okay. Visiting that subject of not taking
20 the full amount of debt, do you think a company who
21 has a net operating loss is in a position to assume
22 more debt, or would they -- is there a financial
23 consideration that if you are at a net operating
24 loss, you should try to minimize the debt that you
25 have to service?

1 A. Actually I -- and unfortunately I
2 addressed this more in the Elm Hills case in 2020,
3 but if there's a -- if there is a fundamental change
4 in the expected earnings of cash flows for an asset
5 because of, you know, some structural event -- and I
6 will say a structural event for these small water and
7 sewer utilities is having their rates increased to
8 reflect the lost of service -- the creditor is going
9 to look at that as the credit profile.

10 The history of Confluence in these
11 underperforming systems is not what's important.
12 What's important is what do you expect the financial
13 performance to be going forward. And CoBank is
14 actually aware of the way the utilities', you know,
15 ratemaking world works. You know, obviously they
16 might like, you know -- I'll just be honest, I mean,
17 they might like things in Louisiana better because
18 they have formula rates or what have you. But in
19 Missouri, you know, we've -- you know, the financial
20 performance of our utility operating companies for
21 CSWR has been quite good.

22 Q. So is it -- is it a way -- so from the
23 ratepayers' perspective, would the ratepayer be
24 better served if Confluence had taken the entire
25 amount of debt offered, or is the ratepayer better

1 served if that debt would be serviced faster?

2 A. The ratepayer is better served if you
3 reflect the cost, you know, the capital structure
4 that is consistent with the risk of their assets that
5 have been improved. So I am not taking into
6 consideration acquisition of future systems that may
7 have net operating losses in determining what I think
8 is a fair and reasonable capital structure and rate
9 of return. I'm looking at the systems that are in
10 here for a rate case.

11 And so the ratepayers are better served to
12 pay a cost of capital, to pay a rate of return
13 consistent with the reality of their current
14 situation which is rehabilitated systems that are
15 going to have their rates increased.

16 COMMISSIONER HOLSMAN: Okay. Thank you
17 very much. Judge, that's all the questions I have.

18 MR. MURRAY: Thank you.

19 JUDGE HATCHER: Thank you, Commissioner
20 Holsman. Any other commissioner questions? All
21 right. The Bench has no questions.

22 That will take us to recross. That's
23 going to be Mr. Thompson.

24 MR. THOMPSON: Thank you, Judge. I have
25 no questions. Thank you.

1 JUDGE HATCHER: And, Mr. Cooper.

2 MR. COOPER: Sorry, your Honor.

3 RECROSS-EXAMINATION

4 BY MR. COOPER:

5 Q. Just one point of clarification. Based
6 upon Commissioner Holsman's question, you made a
7 specific reference to systems subject to the rate
8 case. Do you remember that?

9 A. Yes.

10 Q. And by that I take it you mean systems
11 that were a part of Confluence Rivers as of
12 January 31st of 2023. Correct?

13 A. That's my understanding, yes.

14 Q. Yeah. And so when you talk about your
15 credit rating and at that, essentially at that point
16 in time, it necessarily ignores some of the reality
17 that I talked about in my opening statement today,
18 right, that there's already four additional systems
19 to what was there as of January 31st. So those
20 are -- those are part of the company as --

21 A. Yes. I don't believe --

22 Q. -- we sit here today. Correct?

23 A. Yeah. I don't believe the current -- the
24 ratepayers to the current system should have to pay a
25 higher cost of capital for additional acquisitions.

1 Q. And that's interesting because the only
2 way that the Company can ultimately get the rate
3 adjustment that those new systems are likely to need
4 is to bring back the entire Company for a new rate
5 case. Correct?

6 A. Yes. That's an unfortunate situation I
7 guess, yes.

8 Q. And it's not only the four systems.
9 There's other systems that are -- that have already
10 been approved that will be closed soon. Correct?

11 A. I don't know the details on that.

12 Q. But you'd assume there's other systems in
13 the works. Right? I mean, you're aware there's
14 other applications?

15 A. I believe that, yeah, I just saw an
16 internal document that indicated there was other
17 targets.

18 Q. Right. So when you talk about, you know,
19 the credit rating of the company, you know, only
20 including the existing systems, would you agree with
21 me it just -- it just ignores reality, correct, as to
22 what the Company's going to look like on the first
23 day new rates come into effect?

24 A. But ratepayers of these systems are not
25 paying for the Company's financial and investment

1 strategy. The Company's -- the ratepayers of the
2 systems are paying for the risk of their assets.
3 And, you know, investments have been made in their
4 assets and the cost of capital rate of return should
5 be consistent, which as I've seen with Hillcrest and
6 Raccoon Creek -- well, let's just take, you know,
7 that for example. Hillcrest -- Hillcrest has been
8 wrapped into Confluence and, you know, I calculated
9 a 30 percent ROE. If you start just wrapping them up
10 and saying that they could not raise more debt than
11 even 55 percent, I would -- I would claim that that's
12 wrong because I got information in my testimony that
13 shows they could -- they could have a hundred percent
14 debt. And so that's just not fair. I mean, it's the
15 reality, but it's not -- that's not fair to the
16 current rate payers.

17 Q. But ultimately we're talking about the
18 risk of the Company itself. Right? And you were
19 asked -- and you were asked before about the, you
20 know, the Company's strategy essentially, its
21 approach to business. And I think you agreed you
22 have not seen -- was that you that said you had not
23 seen any other company that had that sort of focus
24 on --

25 A. No. This was very --

1 Q. -- the small, distressed system?

2 A. A very aggressive growth strategy that
3 should be -- fall on to the investors.

4 Q. I guess my -- where I fall -- I fall away
5 is that, you know, this focus on one system by one
6 system seems like it leads -- it doesn't lead to
7 ultimately a company that is strong and able to
8 continue to purchase the small, distressed systems
9 that I think there's at least some agreement, is to
10 the benefit of the State, it's to the benefit of a
11 lot of public interest in a lot of ways. Correct?

12 A. That's correct. But if you want to talk
13 to the ratepayers of Hillcrest that have had
14 exceedingly and unbelievably good financial
15 performance where their FFO, the funds from
16 operations is 150,000 and doesn't vary by plus
17 or minus 5,000, since they had their rates raised
18 in 2017, I think they would strongly disagree that
19 they should be just grouped in and subsidize the
20 growth through acquisitions. So no, I do not think
21 that that is a good policy. I think the policy is
22 you raised rates on them about six years ago, plus
23 they paid the 14 percent rate and they got NOLs with
24 that. That is entirely unfair to those ratepayers.

25 Q. But from where they came from, Mr. Murray,

1 you remember where they were when the system was
2 first purchased. Right?

3 A. And they paid for it. They paid extremely
4 high rates and that's why they're such good financial
5 performance. They -- and they don't have hardly any
6 risk.

7 Q. And in this case even under the Company's
8 proposal, their rates would actually go down.
9 Correct?

10 A. Yes.

11 MR. COOPER: Okay. Thank you. That's all
12 the questions I have.

13 JUDGE HATCHER: And redirect.

14 MR. CLIZER: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. CLIZER:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Let's start back at the beginning with the
20 cross-examination by Staff. Do you recall that?

21 A. Yes.

22 Q. You had a discussion regarding the
23 potential aftereffects of the Fresh Start loan. Do
24 you recall that?

25 A. Yes.

1 Q. And I think that you mentioned that the
2 remaining effect of the accumulated interest expense
3 was about 5.5 million. Is that correct?

4 A. That's correct.

5 Q. Did you develop a worksheet to calculate
6 that amount?

7 A. Yes. I looked at the annual reports that
8 were filed with PSC, relied on some DR responses from
9 the Company, and also, you know, checked some of them
10 against the tax returns that I had available to
11 determine the total interest paid.

12 MR. CLIZER: Your Honor, I'd like to mark
13 Exhibit 230.

14 JUDGE HATCHER: So marked.

15 (OPC Exhibit 230 was marked for
16 identification.)

17 BY MR. CLIZER:

18 Q. Mr. Murray, is this the worksheet that you
19 were just referencing now?

20 A. Yes, it is.

21 Q. So this is something that you've
22 developed?

23 A. I did personally, yes.

24 Q. Can you please, again, just high level
25 explain how you came to these numbers?

1 A. I pulled the information from 2016
2 through 2020 directly from the PSC annual reports for
3 each of these utility operating companies. For 2021
4 because the Company -- the utility operating company
5 no longer filed independent, individual PSC annual
6 reports, I relied on information that the Company
7 provide to me in response to a data request, so their
8 financial statements. In 2022 I relied on response
9 from the Company to one of my data requests.

10 And just to clarify, the Confluence when
11 it says consolidated, you know, Confluence never had
12 a Fresh Start loan, only Hillcrest, Raccoon Creek,
13 Indian Hills and Elms Hills. So that \$1,110,000 is
14 an addition of all the interest from those legacy
15 utility operating companies.

16 Q. And so this document shows how to
17 calculate the total interest expense that the Company
18 has claimed on its financial reports effectively or
19 income taxes?

20 A. Yes. They match up pretty close.

21 Q. What would happen to the Company's net
22 operating losses if you backed out the \$5 million, or
23 I'm sorry, \$5.5 million roughly of income tax
24 expense?

25 A. It would be \$5.5 million less.

1 Q. Is it reasonable to have included that
2 income tax expense as part of a calculation of the
3 Company's net operating losses?

4 A. I'm not a tax lawyer. It is a loan
5 between, you know, the same investors that were
6 equity investors in CSWR and equity investors in
7 Fresh Start. I have characterized it as an
8 illegitimate loan. It's not a, you know, separate
9 competing interest, financial interest. They're the
10 same folks. And so I -- I don't know that I could do
11 it myself. I don't know that I could deduct an
12 interest expense if I was paying myself. I'll just
13 leave it at that.

14 MR. CLIZER: Before I forget this time
15 because I have a tendency to, I'll go ahead and move
16 for the admission of Exhibit 230.

17 JUDGE HATCHER: You've heard the motion
18 for the admission of Exhibit 230. Any objections?
19 Hearing none, it is so admitted.

20 (OPC Exhibit 230 was admitted.)

21 BY MR. CLIZER:

22 Q. Let's talk about the discount cash flow
23 method that was -- that was discussed between you and
24 Staff counsel. Do you recall that discussion?

25 A. Yes.

1 Q. Is there any way that you can just put
2 those growth rates in perspective for a more lay
3 person? You threw a lot of numbers around. Is there
4 some way that you can help me understand? Something
5 to compare them to?

6 A. I just -- you know, actually I'll just
7 think about some of the studies on the composition of
8 income -- income returns versus capital gains returns
9 for utilities. And usually the, you know, the income
10 returns, at least for a period of 1970 to like 2010,
11 the income returns made up about two-thirds to
12 three-fourths of the total returns for utility stock
13 investors. So that means about a third of their
14 return was from capital gains.

15 So if you had, you know, a dividend yield
16 of 6 percent and you're going to have, you know, 3
17 percent capital gains, so, you know, for, you know,
18 two-thirds of your returns being for dividend yields,
19 you can get, possibly get a 3 percent growth rate. I
20 mean, it's not complicated math over the long term.
21 And it's -- you know, and that's what utility stocks
22 are known for. I mean, obviously there's a different
23 situation with this company, but that's for proxies.

24 Q. And Mr. D'Ascendis's growth rates are
25 substantially higher than that. Correct?

1 A. He assumes that, yeah, that the Company's
2 going to grow at say 11 percent perpetually into the
3 future.

4 Q. I'm going to turn to a couple of questions
5 that you got from the Bench, specifically from
6 Commissioner Holsman. Do you recall those
7 conversations?

8 A. Yes.

9 Q. And I think the first conversation
10 concerned whether or not Confluence's business model
11 would make them more risky. Do you recall that
12 conversation?

13 A. Somewhat.

14 Q. Has history borne out that Confluence's
15 business model actually is risky?

16 A. For the systems that have been
17 rehabilitated, the financial performance has been
18 fine. For, you know, as far as going out and
19 acquiring additional underperforming systems, I mean,
20 absent the interest issue, yeah. They -- they
21 incur -- you know, they have negative free cash flow,
22 there's no doubt about that. They need capital
23 contrary to what Mr. D'Ascendis said earlier. They
24 need capital.

25 And -- and so yeah. There's -- you know,

1 it's -- it's a -- it's a long -- I mean, it's a lag.
2 I mean, who knows when the lag would be. I mean,
3 they might want to be bought out at some point or --
4 or maybe they'll continue to invest. But it's -- you
5 know, they -- the previous investors, you know,
6 turned a pretty good profit on this business model.
7 So it's not -- it's not like they're selling to other
8 investors at a discount of what they invested, not
9 even close.

10 Q. So for the systems that have come in for a
11 rate case, the system has worked; they've been able
12 to be made whole?

13 A. Yes, no. I said the financial performance
14 of those utility operating companies have been just
15 fine.

16 Q. Actually I'm going to piggyback on that
17 for a second. I'm going to jump around. I'm going
18 to talk about the discussion you had with Staff
19 counsel on recross-examination. And a lot of that
20 had to do with the question of whether or not current
21 ratepayers should be paying for future expansion. Do
22 you recall that?

23 A. Yes.

24 Q. Now, if I understand your testimony
25 correctly, you said basically that the existing

1 Hillcrest, Indian Hills, Raccoon Creek systems have
2 been producing a large amount of the cash flow for
3 the Company currently or in -- recently. Is that
4 right?

5 A. Their earnings before interest, taxes,
6 depreciation, and amortization would justify almost
7 the entire \$7 million debt issuance from CoBank. The
8 other systems are bringing those -- you know,
9 those -- those customers that paid those higher
10 rates, they're bringing that financial performance
11 down for Confluence on a consolidated basis.

12 Q. And that cash flow's going up the chain to
13 Central States Water Resources as well?

14 A. The financial performance. They're not
15 making distributions to -- to their investors.

16 Q. But is that financial informance [sic]
17 benefiting other states at this point?

18 A. It's -- yeah. It's something I have in my
19 testimony, and it's confidential. I don't --

20 Q. Ah, never mind then. Apologies. I did
21 not know that I was trespassing there. I will cite
22 to it in brief.

23 So jumping back to the conversation you
24 had with Commissioner Holsman, would ratepayers be
25 better served. Just at a high level, which is

1 generally higher, cost of equity or cost of debt?

2 A. Within the same capital stack, within the
3 same company, cost of equity's going to be higher
4 than the cost of debt.

5 Q. So all other factors being equal, a higher
6 cost of -- sorry -- a higher equity ratio is going to
7 result in a higher cost to customers?

8 A. Yes.

9 Q. What benefit do customers receive from
10 having a higher equity ratio?

11 A. I mean, you can have more financial
12 flexibility, but there's a price to that financial
13 flexibility, you know, to -- you know, so a little
14 bit of a higher equity ratio allows for some
15 financial flexibility. But again, is that for your
16 current customers or is that for your future growth
17 strategy.

18 Q. And that's really the central point of
19 your argument, correct, that current customers
20 shouldn't be subsidizing future customers. Right?

21 A. Yes.

22 Q. Mr. Murray, you've looked at a lot of
23 different cases, lot of different utilities for the
24 OPC. Right?

25 A. OPC and Staff, but yes.

1 Q. And Staff. It's not uncommon for
2 utilities to be declaring that operating loss for tax
3 income purposes?

4 A. Different reasons, yes.

5 Q. For those utilities that have been in a
6 net operating loss for tax income purposes, have they
7 still either refinanced debt or issued new debt?

8 A. Generally, yes.

9 Q. So it's not uncommon at all for a utility
10 to issue new debt despite having a net operating
11 loss?

12 A. I mean, that's been the case with bonus
13 depreciation. I mean, that's -- yeah, that's --
14 that's happened frequently.

15 MR. CLIZER: I think I have no more other
16 questions. Thank you.

17 JUDGE HATCHER: Thank you, Mr. Murray.
18 You are excused subject to recall.

19 We are down to one issue for today. That
20 is the water flow rate. I am tempted to take a quick
21 break now. We've been going for an hour and 20
22 minutes. About 10 minutes and -- yes, absolutely.
23 We're on break. Let's go off the record.

24 (off the record.)

25 JUDGE HATCHER: The hour of recess

1 having expired, let's go back on the record. We
2 are rejoining the Confluence general rate
3 case, WR-2023-0006 and we are on the issue of water
4 flow rate. I believe the parties intend to start
5 with mini opening statements, and we'll go ahead and
6 get started with --

7 MR. CLIZER: I waive.

8 MR. WOODSMALL: Your Honor, if it's good
9 for you, I think we're all going to waive.

10 JUDGE HATCHER: Hearing no objection,
11 mini opening statements will be waived. We'll go
12 ahead and have the Company call its first witness.

13 MR. WOODSMALL: Thank you. Mr. Lyons,
14 can you hear me?

15 MR. LYONS: Yes, I can. Good afternoon.

16 MR. WOODSMALL: Okay. Your Honor, we'd
17 call Mr. Lyon -- or Tim Lyons to the stand please.

18 JUDGE HATCHER: And, Mr. Lyons, please
19 raise your right hand.

20 TIMOTHY LYONS

21 The witness, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 JUDGE HATCHER: Thank you, sir. Your
25 witness.

1 MR. WOODSMALL: Your Honor, before I move
2 for his admission of his testimony, I'd just like to
3 level set a bit. As you'll recall, the three parties
4 here all agreed to waive cross-examination of each
5 other's witnesses. So other than some foundational,
6 corrective type matters, we're going to waive
7 cross-examination and just take Commission questions.
8 Is that your understanding?

9 JUDGE HATCHER: No. I'll take that
10 understanding. I thought it was AMI.

11 MR. WOODSMALL: AMI was addressed by my
12 stipulation this morning.

13 JUDGE HATCHER: Right. And so that was
14 waived. That's in the books so to speak.

15 MR. WOODSMALL: Right.

16 JUDGE HATCHER: And we're going to have
17 the same treatment for water?

18 MR. WOODSMALL: Correct.

19 JUDGE HATCHER: Okay. New to me, but I
20 like it.

21 MR. WOODSMALL: Okay. Thank you, your
22 Honor.

23 BY MR. WOODSMALL:

24 Q. Would you spell your -- would you state
25 your name and spell it please.

1 A. It's Timothy Lyons, last name is
2 L-y-o-n-s.

3 Q. And by whom are you employed and in what
4 capacity?

5 A. ScottMadden and I'm a partner.

6 Q. And have you been retained to provide
7 testimony in this case by Confluence Rivers Utility
8 Operating Company?

9 A. Yes, I have.

10 Q. And you filed direct, rebuttal, and
11 surrebuttal testimony. Is that correct?

12 A. Yes, that's correct.

13 Q. And for your information, those have been
14 is marked as Exhibits 12, 13, and 14. Do you have
15 any corrections to make to that testimony?

16 A. No, I do not.

17 Q. And if I were to ask you the same
18 questions here today, would your answers be
19 substantially the same?

20 A. Yes, they would.

21 Q. And are those true to the best of your
22 knowledge, information, and belief?

23 A. Yes, they are.

24 MR. WOODSMALL: Your Honor, I'd move for
25 the admission of Exhibits 12, 13, and 14 and tender

1 the witness for cross-examination.

2 JUDGE HATCHER: Thank you. You heard the
3 motion of counsel. Exhibits 12, 13, and 14, are
4 there any objections? Seeing none, they are so
5 admitted.

6 (Company Exhibits 12, 13, and 14 were
7 admitted.)

8 JUDGE HATCHER: The witness has been
9 tendered. We'll go to Mr. Thompson.

10 MR. THOMPSON: Mr. Vandergriff is
11 representing Staff on this issue, Judge.

12 JUDGE HATCHER: My apologies.
13 Mr. Vandergriff.

14 MR. VANDERGRIFF: We waive
15 cross-examination.

16 MR. CLIZER: We've all waived.

17 JUDGE HATCHER: Oh, gosh dang it.

18 MR. WOODSMALL: I probably shouldn't have
19 said it that way.

20 JUDGE HATCHER: No, no, no, no, no. You
21 just said it just ten seconds ago. My apologies.
22 Staff waives cross-examination. I'll speak on behalf
23 of OPC; they waive cross-examination. Are there any
24 commissioner questions? I know that we do have
25 commissioners on the Webex. We'll wait just a

1 moment.

2 Okay. Give me just a second. I need to
3 review this real quick. I'm still getting it in
4 front of me, Mr. Lyons.

5 QUESTIONS

6 BY JUDGE HATCHER:

7 Q. Figure 1 of your surrebuttal testimony
8 shows Average Customer Usage by Service Area. Is
9 this the same data that was provided to Staff?

10 A. Yes, it was. These are part of our work
11 papers.

12 Q. Just to confirm, Figure 1 represents
13 the 12 months ending December 31st, 2022?

14 A. Twelve months ending June 30th, 2022.

15 Q. What were the source documents you relied
16 on for Total Water Usage column?

17 A. These came directly from the Company.
18 Just we were provided a spreadsheet that had all of
19 the bills and water usage.

20 JUDGE HATCHER: Okay. Thank you. We
21 have been joined by a commissioner in person, so I
22 will just ask once again if there's any commissioner
23 questions. Hearing none, I have had questions, so we
24 will go ahead and go through recross and then
25 redirect. Mr. Vandergriff?

1 MR. VANDERGRIFF: No. We don't have any
2 questions.

3 JUDGE HATCHER: Mr. Clizer.

4 MR. CLIZER: No questions. Thank you,
5 your Honor.

6 JUDGE HATCHER: Confluence.

7 MR. WOODSMALL: Just one.

8 REDIRECT-EXAMINATION

9 BY MR. WOODSMALL:

10 Q. Mr. Lyons, do you recall being asked by
11 the Bench the date for your usage data and that was
12 through June 30th, 2022. Is that correct?

13 A. Yes.

14 Q. Do you believe that the usage data through
15 June 30th would also be reflective of usage through
16 either 12/31/22 or 1/31/23?

17 A. I have no information that would suggest
18 it would be different.

19 MR. WOODSMALL: Thank you, your Honor.

20 JUDGE HATCHER: Thank you. Thank you.

21 Mr. Lyons, you are dismissed from the virtual witness
22 stand. I appreciate your appearance. Mr. Cox's
23 testimony has already been entered. He's listed as a
24 witness on the entire issue. We didn't take out just
25 water.

1 MR. WOODSMALL: Thank you.

2 JUDGE HATCHER: Thank you. Let's move on
3 to Staff. Does Staff have a Witness Roth? Or we're
4 substituting, let me think, Gateley?

5 MR. VANDERGRIFF: Yes, your Honor. We
6 call Curtis Gateley to the stand.

7 JUDGE HATCHER: Sorry. That was my part.
8 Please raise your right hand.

9 CURTIS GATELEY

10 The witness, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 JUDGE HATCHER: Thank you, sir. Please
14 have a seat. Your witness.

15 BY MR. VANDERGRIFF:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Will you please state your name and spell
19 your name for the record.

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

22 Q. By whom are you employed and in what
23 capacity?

24 A. Public Service Commission Staff. I'm the
25 manager of the Water, Sewer, and Steam Department.

1 Q. Are you the same person who caused to be
2 prepared certain testimonies which have been marked
3 as Staff exhibits which is direct testimony 111,
4 rebuttal testimony 118, and 130 which is surrebuttal
5 testimony.

6 A. I'm sorry. Yes. I did prepare those
7 testimonies, but I'm also sponsoring additional
8 testimony.

9 Q. All right. So you're sponsoring those
10 testimonies. Do you have any changes or corrections
11 to any of those testimonies?

12 A. I have been made aware that there is a
13 correction to Keri Roth's testimony which has already
14 been alluded to by -- in the opening to the case.
15 There's a mathematical error in the previous rate
16 design that she had prepared. It's -- it does not
17 directly impact the -- the remaining issue of what
18 average usage that's used in the rate design, but
19 she, in calculating anticipated sales, she included
20 in her math an assumed usage for unmetered customers,
21 which would not have a metered usage; they're charged
22 a flat rate. And the result of that caused errors
23 then in calculating commodity rates. But that error
24 is easily taken care of in any future rate design
25 that might come out of this case.

1 MR. VANDERGRIFF: Your Honor, we can go
2 about addressing this correction two ways. We can
3 either amend it to Exhibit 133, our current errata
4 sheet, or we can file a new one.

5 JUDGE HATCHER: Do you already have an
6 errata sheet prepared?

7 MR. VANDERGRIFF: Exhibit 133.

8 JUDGE HATCHER: Oh. It's already in
9 evidence.

10 MR. VANDERGRIFF: That one is and we can
11 amend it to address these corrections.

12 JUDGE HATCHER: I'm going to ask the
13 parties. My inclination is, and I know my preference
14 has been for a written submission, but just listening
15 to his answer, if this is the only one, I was kind of
16 thinking of just accepting the on-the-record answer.
17 However, I would assume that counsel may prefer
18 something in writing, so I'm good with whatever the
19 wishes of counsel are.

20 MR. WOODSMALL: Your Honor, I believe
21 Mr. Gateley's clarification suffices for us. As he
22 indicated, they're still using the 5000 gallon
23 surrogate, so it does not affect their bottom line
24 calculation. The clarification is adequate for us.

25 MR. CLIZER: My understanding being that

1 it does affect the issue which -- or affect the --
2 the clarification is directed towards an issue which
3 is hopefully pending settlement, so I am okay with
4 the clarification on the record as well.

5 JUDGE HATCHER: Okay. Then, Counsel,
6 thank you. I do not need an addition to the errata
7 sheet. I appreciate the offer.

8 MR. VANDERGRIFF: Thank you.

9 BY MR. VANDERGRIFF:

10 Q. Mr. Gateley, taking into account those
11 corrections that you stated today, if I asked you the
12 questions that were in the testimony, would you give
13 the same answers today as in the testimony?

14 A. Yes.

15 MR. VANDERGRIFF: At this time I offer
16 Staff Exhibits 111, 118, and 130 and I tender the
17 witness for cross-examination.

18 JUDGE HATCHER: Thank you. Before I ask
19 the other counsel for objections, I just want to
20 double check and make sure. We are not asking for
21 Exhibit 108 or 126 which is Witness Gateley's
22 testimony; we're asking for Witness Roth's just --

23 MR. VANDERGRIFF: Right.

24 JUDGE HATCHER: Thank you, sir. Are
25 there any objections? You heard the motion; we'll

1 take them all in one, just for Witness Roth's
2 testimonies, 111, 118, 130, are there any objections?
3 Seeing none, it is so admitted.

4 (Staff Exhibits 111, 118, and 130 were
5 admitted.)

6 JUDGE HATCHER: Witness has been
7 tendered. Mr. Clizer.

8 MR. CLIZER: Oh, right. No questions.
9 Thank you, your Honor.

10 JUDGE HATCHER: Confluence.

11 MR. WOODSMALL: No questions, your Honor.
12 We waived.

13 JUDGE HATCHER: We waived.

14 MR. CLIZER: Didn't matter. It's all
15 good.

16 JUDGE HATCHER: That's okay. I got
17 Clizer. He had to answer on the record. Sorry.
18 Bench questions. Sorry. Are there any commissioner
19 questions? We'll pause for a minute.

20 COMMISSIONER HOLSMAN: Judge, I've got a
21 question.

22 JUDGE HATCHER: Yes, Commissioner
23 Holsman.

24 COMMISSIONER HOLSMAN: Thank you.

25 QUESTIONS

1 BY COMMISSIONER HOLSMAN:

2 Q. DNR publication 2852 says the average
3 family's indoor water usage is about 50 gallons per
4 day per person. Is that a fair estimate?

5 A. I don't know for certain what they relied
6 on to -- to come up with that number. I -- I believe
7 that it was probably a good number for them, but I --
8 I don't know that it lines up very well with what
9 we've experienced across the state.

10 Q. And how many family members per household
11 are you counting?

12 A. Our efforts are at -- what we've seen as
13 far as per customer usage did not include an analysis
14 of the numbers of persons in a house. We have lots
15 of different situations. We have a great deal of
16 customers where it's only two people, maybe retired
17 couple; we have other situations where it's perhaps
18 one person with an extensive irrigation system. So
19 we're -- we're faced with many different settings.

20 Q. Okay. And how many gallons per day per
21 household are you testifying to?

22 A. We have seen -- I have seen usage as low
23 as 3,600 gallons per customer per month and usage
24 greater than 6,000 per customer per month for a
25 system. Obviously there's much greater variability

1 within a system, but I did not try to do a breakdown
2 on that math. I could. The efforts that we're
3 making for rate design and for the examples that we
4 send out for local public hearings is a per monthly
5 average that we see.

6 Q. And that's somewhere between 3,600
7 and 6,000?

8 A. Generally speaking, yes.

9 COMMISSIONER HOLSMAN: Okay. Thank you,
10 Judge. That's all the questions I have.

11 JUDGE HATCHER: Thank you, Commissioner.
12 Are there any other commissioner questions? Okay.
13 The Bench does have just a couple.

14 QUESTIONS

15 BY JUDGE HATCHER:

16 Q. How did Staff come up with 5,000?

17 A. Really it was just our professional
18 judgment based on what we have seen. We felt
19 that 5,000 was a conservative estimate to use.
20 The -- I said earlier, we have seen usage that
21 generally is in the ballpark of between 4,000
22 and 5,000 most commonly. We have seen lower. I
23 remember one, although I can't remember the name of
24 the system, that I remember seeing actual average
25 data that was 3,600 that looked pretty reliable. So

1 really we were forced to make an estimate, and we
2 chose what we thought was a good number that was
3 conservative.

4 Q. So you looked at other systems in Missouri
5 and decided on an average? I'm basically using
6 "average" as a term of art, but you determined from
7 your experience that 5,000 was an appropriate number?

8 A. Yes.

9 Q. Does that weighing of the systems
10 differentiate between urban and rural?

11 A. In this effort, it -- it does not. The
12 systems that Confluence has generally speaking are
13 more rural. Generally speaking, we have had our
14 highest usage in some of the more affluent areas in
15 rural -- or sorry -- in urban settings where folks
16 are irrigating yards. And in some cases they're
17 required to by their homeowners association of
18 course. But those are the folks who would have the
19 highest usage and, you know, it's not unusual to
20 see 10,000 gallons a month for some of those folk.

21 Q. In Witness Roth's prefiled testimony, she
22 indicated that Staff was not able to use the
23 Company's promoted average due to, quote, problems
24 with the quality of Confluence's water sales data.

25 A. From our perspective, yes.

1 Q. Can you enlighten me on what those
2 problems are?

3 A. I'll preface it by saying I fully
4 acknowledge that Confluence is buying systems that
5 are, well, I'll say the majority of the systems that
6 they're purchasing are sometimes not in the best
7 shape. But in looking at the data that the Company
8 provided in response to data requests that our
9 auditors had put forth in trying to establish
10 revenues, there's -- there's several troubling
11 things.

12 And I have an attachment that I put on my
13 direct testimony which we haven't admitted yet, but
14 it includes some of these examples where Terre Du Lac
15 for example, they have in 2022 the data they reported
16 to us, all but four months they sold more water than
17 they produced. Well, that physically can't happen.
18 You know, there's -- there's some problem with
19 metering or some problem with -- with the data
20 reporting.

21 Have other situations where system reports
22 significant water loss or non-revenue water where
23 they produced quite a bit more than they sold
24 routinely. In other situations it -- there are wild
25 swings between magically selling more water than what

1 they produced versus then maybe the next month a
2 water loss.

3 And from what -- from what I'm seeing with
4 the data overall, this -- this doesn't look
5 representative of what's actually going on. My -- my
6 first instinct is that you're buying some systems
7 that haven't had investment, but the most likely
8 scenario is that some amount of the water loss is the
9 meters aren't spinning accurately. Customer meters,
10 they're -- they're not paying for all the water
11 they're using. There isn't a good way to quantify
12 that without having all those meters tested, but as
13 has been presented in other evidence that -- or other
14 testimony, it's not something you can figure out
15 instantly.

16 I don't believe that 2,750 is an accurate
17 representation of how much water folks are actually
18 using. But we don't -- we don't have a good number
19 for what it is. Might it likely be somewhere in
20 between 2,750 and 5,000, it's certainly possible.
21 But until meters are replaced, there's not a good way
22 to know or well, test -- tested or replaced.

23 JUDGE HATCHER: Thank you. That'll take
24 us to recross-examination. Mr. Clizer.

25 MR. CLIZER: No questions, thank you.

1 JUDGE HATCHER: Confluence.

2 MR. WOODSMALL: Thank you, your Honor.

3 RECROSS-EXAMINATION

4 BY MR. WOODSMALL:

5 Q. Just working -- well, we'll work in the
6 same order. You were asked some questions by
7 Commissioner Holsman representing that DNR
8 publication 2852. Do you recall that question?

9 A. I recall the question.

10 Q. And you are not familiar with that
11 document, are you?

12 A. It's certainly possible that I have read
13 it, but I don't have an immediate recollection of it.

14 Q. Okay. But it talks about 50 gallons per
15 day per customer. Do you recall him quoting that?

16 A. I do.

17 Q. And do you know whether that 50 gallons is
18 measured at the customer meter or at the discharge of
19 the well?

20 A. I do not know.

21 Q. Okay. And so you don't know if it
22 accounts for lost and unaccounted for water, do you?

23 A. I do not.

24 Q. So you don't know whether it's applicable
25 to this issue or not?

1 A. Correct.

2 Q. Okay. Do you know, and I believe you
3 started down this path, but would you expect there to
4 be a reduced penetration level of swimming pools and
5 irrigation at Confluence water systems than Missouri-
6 American systems?

7 A. Not directly. But I would be willing to
8 say is that I -- in the systems that we're talking
9 about that Confluence owns right now, I would not
10 expect a proliferation of pools and irrigation.

11 Q. And --

12 A. Missouri-American's settings are widely
13 variable.

14 Q. And when you came up with the surrogate
15 level of 5,000 gallons per month, did you factor in
16 Missouri-American into that determination?

17 A. It's part of the experience I relied upon,
18 yes.

19 Q. Okay.

20 A. Or we relied upon.

21 Q. Can you tell me what other systems you
22 relied upon?

23 A. I do not have a list. It is based on my
24 recollection and other Staff's recollection of the
25 last several that we had examined. And based upon

1 our experience when we did have data, there are
2 situations where we're having to make these kinds of
3 estimates sometimes where we don't have data yet,
4 such as local public hearing notices and such. But I
5 did not try to do a detailed analysis of various
6 systems.

7 Q. Okay. So let's inquire into that a
8 little further. You said you relied upon Missouri-
9 American and some other systems. Do you recall
10 that?

11 A. Yes.

12 Q. So your knowledge would come about
13 primarily through a Missouri-American rate case or a
14 small water company rate case. Is that correct?

15 A. It's fair to say primarily, yes.

16 Q. Okay. In the last five years, what small
17 water rate cases have you done?

18 A. Some of the previous legacy companies for
19 Confluence; Missouri-American twice; I believe
20 Liberty once. Some of the company names blend
21 together where I'm not so sure -- certain as a
22 manager if it was water and sewer. But Argyle
23 Estates, SK&M, and that one might have been twice in
24 the last five years. I believe Raytown perhaps once
25 in the last five years. There's -- there's a

1 handful. I'm certain that some of my staff are
2 hollering and wish I could remember all of them.

3 Q. Final line of questioning. You talked
4 about you're certain that there are customers not
5 paying for all their usage. You recall that?

6 A. If I said that, that's not what I meant.
7 What I recall is that it's my belief that it's
8 likely, based on the situation and some of the data,
9 that some of the meters are probably not reading
10 accurately.

11 Q. Okay.

12 A. That some customers are receiving more
13 water probably than what they're paying for.

14 Q. And would you agree that generally as
15 meters age, they read low?

16 A. Yes.

17 Q. Okay. And if the meters that were used
18 for the data provided in this case are the same
19 meters that will be used to do billings in the near
20 future, if they both read low, where's the concern?

21 A. My concern is that the meters need to be
22 replaced. The Company has agreed to -- well, back
23 up. The Company has agreed to test or replace
24 meters. If we assume that these meters have
25 degrading quality and the regulations anticipate that

1 they would have trouble beyond ten years, and many of
2 these systems are older than ten years, that as the
3 Company replaces those meters so that it is
4 collecting accurate bills, if too low of a number is
5 used for the rate design development, as the Company
6 goes through replaces those meters, the potential
7 exists for over-collection.

8 Q. But that replacement is going to take
9 place over a long extended period of time. Is that
10 correct?

11 A. I am optimistic that the Company will be
12 pretty aggressive with their meter replacement
13 process.

14 Q. They've only agreed to test 10 percent a
15 year, is that correct, and you've agreed to that?

16 A. Test or replace, yes.

17 MR. WOODSMALL: No further questions.

18 JUDGE HATCHER: Okay. We'll move to
19 redirect.

20 REDIRECT EXAMINATION

21 BY MR. VANDERGRIFF:

22 Q. Good afternoon, Mr. Gateley. The Bench
23 asked you about problematic data. Why didn't you
24 choose to go with the Company's numbers?

25 A. My concern is that with an average number

1 that low, if we use that in the rate design, in my
2 opinion it was likely that the Company would collect
3 more than the amount that eventually they would be
4 authorized by the -- by this proceeding to collect.
5 If you use too low of a number in assumed sales or in
6 this case, if we use the number presented by the
7 Company, then the result of the rate design would be
8 a situation where if they actually sold more than
9 that, then they would over-collect.

10 Q. And you were also asked questions about
11 meters reading low. How is that relevant to our
12 estimate for 5,000 gallons versus the Company's
13 estimate?

14 A. Staff used a conservative estimate
15 of 5,000, but with a number that was so low as
16 presented by the Company, it seemed to me likely that
17 some of these older meters were not recording all the
18 flow going through them. If we go with the
19 assumption that for some of these systems that
20 Confluence had purchased that had had no investment
21 in a -- in a treatment system or -- sometimes or in
22 the distribution system, that they probably also
23 hadn't had a lot of investment in metering. And it's
24 been my experience that a lot of these systems that
25 have really old meters need that work, need to have

1 them replaced. And we said -- made a judgment call.

2 If we use the Company's numbers, my fear is they
3 over-earn.

4 Q. So there was questions about the AMI
5 meters and testing them, 10 percent a year. That was
6 a minimum. Could they replace more than the 10
7 percent? Could they test more than that 10 percent a
8 year?

9 A. Yeah. This isn't specifically related to
10 the AMIs, but yes, for customer meters, there's
11 nothing preventing the Company from having more rapid
12 testing or more rapid deployment of replacement of
13 meters.

14 Q. With that said, has any customers had
15 their meters replaced?

16 A. I'm certain some have. That would be a
17 normal, typical situation. For example, if the
18 Company had bought a system that had substandard
19 meters pits that weren't insulated well or weren't
20 deep enough and those meters froze, then Confluence
21 would have replaced meters and fixed that problem.
22 So I do not have a -- a listing of how many meters
23 have been replaced amongst all their systems in the
24 last ten years.

25 Q. Since some meters have already been

1 replaced, is it --

2 MR. WOODSMALL: Your Honor, I believe that
3 mischaracterizes Mr. Gateley's testimony. He wasn't
4 aware of any.

5 JUDGE HATCHER: Yeah. I'm -- I'm afraid
6 I agree with Mr. Woodsmall. He phrased it pretty
7 particularly that he assumed; I don't think he said
8 assume, but he -- he believed that there probably
9 was, but I didn't hear a definitive.

10 BY MR. VANDERGRIFF:

11 Q. Are you assuming that meters have been
12 replaced, or are you relatively sure that any meters
13 have been replaced?

14 A. I am assuming that some meters likely have
15 been replaced because it would have been unusual for
16 a company that is generally pretty responsive to
17 situations, problems, it would be unusual for them
18 not to have encountered a situation where they had to
19 replace some meters.

20 Q. So let's assume that some of those meters
21 have been replaced. If meters had been replaced,
22 then would new -- would those new owners potentially
23 subsidize the cost of the older people who are going
24 to get new meters later? I can rephrase that.

25 A. Yeah. I'm not understanding the question.

1 Q. All right. Let's assume that some
2 meters were replaced. Would lower usage cost
3 customers to pay or subsidize the customers with
4 older meters?

5 A. There can be a situation where if some
6 meters have been replaced and those readings are
7 accurate, that those customers could be paying more
8 than -- to cover the amount of money that a customer
9 with a poorly performing meter isn't paying. If the
10 Company's under-collecting from some customers,
11 they could, in theory, as a result of this rate case
12 proceeding, try to recover that shortcoming. And if
13 folks have an accurate meter, yes, they could be,
14 although I don't use that word "subsidizing," they
15 could be paying more and folks with an older meter
16 could be paying less.

17 MR. VANDERGRIFF: No further questions.

18 JUDGE HATCHER: Thank you, Mr. Gateley,
19 you are excused. I believe we're moving to Office of
20 Public Counsel witnesses.

21 MR. CLIZER: We don't have a witness for
22 this issue.

23 JUDGE HATCHER: Because I'm looking at
24 the list for Issue Five, rate design. Excellent.
25 That is all the witnesses that we have on water

1 usage, water flow rate. I did not expect us to be
2 ending this fast. This kind of caught me off guard
3 obviously.

4 Okay. Let's talk through this. What
5 time do we want to start tomorrow?

6 MR. WOODSMALL: Your Honor, I believe
7 there is some possibility that we can finish
8 tomorrow, so it -- given that, it may be in
9 everybody's best interest to start at 9:00 and see if
10 it's possible.

11 JUDGE HATCHER: Any objections? Sold.
12 Nine o'clock.

13 And on the schedule for everyone's
14 listening convenience, the issues I have are only C
15 and D of the operation and maintenance issue.

16 MR. CLIZER: Your Honor.

17 JUDGE HATCHER: Yes.

18 MR. CLIZER: I'm sorry. You were reading
19 that out, and I apologize.

20 JUDGE HATCHER: No, no, you're good.

21 MR. CLIZER: Want to let you know that
22 OPC has chosen to withdraw Issue C and will be
23 leaving Angela Schaben off the list of witnesses as
24 well. We will be proceeding on just Issue D with
25 just Dr. Marke as our witness.

1 JUDGE HATCHER: Thank you for the
2 clarification. And the other two issues will be 21,
3 corporate allocations; 25, capitalization versus
4 expense.

5 MR. WOODSMALL: And while we are
6 proceeding down this road, we also be dropping the
7 corporate allocation issue.

8 JUDGE HATCHER: I don't hear any
9 objections. Sold.

10 So tomorrow we are down to Issue D,
11 operations and maintenance. Since I'm reading stuff
12 out loud, let me grab that real quick.

13 Issue D is should the Commission order a
14 disallowance related to Confluence's contract-based
15 business model, and if so, how much.

16 That issue and capital -- capitalization
17 versus expense.

18 MR. WOODSMALL: Your Honor, and to
19 further clarify, I have no doubt Mr. Thompson was
20 going to raise this, that at least the parties I
21 think were going to waive cross on Mr. Harris and
22 Mr. Williams.

23 MR. THOMPSON: Right.

24 MR. WOODSMALL: Cleaning up the case.

25 JUDGE HATCHER: So noted. Any other

1 announcements before we adjourn for the day?

2 Excellent. We're off the record and adjourned.

3 (Whereupon, the hearing was adjourned
4 until August 16, 2023 at 3:09 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

3 COUNTY OF COLE)

4 I, Shelley L. Bartels, a Certified Court
5 Reporter, CCR No. 679, do hereby certify that I was
6 authorized to and did stenographically report the
7 transcript of proceedings; and that the foregoing
8 transcript, pages 1 through 188, is a true record of
9 my stenographic notes.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, or attorney, or counsel of any of the
12 parties, nor am I a relative or employee of any of
13 the parties' attorney or counsel connected with the
14 action, nor am I financially interested in the
15 action.

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17 DATED this 20th day of August, 2023.

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Shelley L. Bartels, CCR 679

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