STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

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

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

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

Let's see. The other -- I have two other announcements. The -- the gallon estimate, the water gallon estimates, the 5000 versus the 2750, that issue will be raised after 12:30 to allow for Confluence witness Lyons. And I would prefer that we just keep that whole issue and all of its witnesses in one bundle. So whatever time we do decide on, I know that that's his first availability, so we don't have to be at 12:30, but I would assume at about 10:30, quarter to 11:00 when we take our first break, that that might be discussed.

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

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

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

JUDGE HATCHER: I am going to ask for

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

MR. CLIZER: No, your Honor.

JUDGE HATCHER: Thank you, Mr. Woodsmall.

MR. WOODSMALL: Thank you, sir.

JUDGE HATCHER: Mini opening statements. Mr. Cooper, thank you.

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

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

Confluence Rivers, Staff, and OPC have all provided the Commission with the testimony of experienced witnesses as to cost of capital. These testimonies concern a number of calculations and interpretations of data for you to consider. But as you examine these calculations and interpretations for the purpose of exercising your fair and enlightening judgment or common sense, please keep in mind the nature of the Company's business, to take on small distressed systems and bring those systems into regulatory compliance; the practical limitations on rates as the Company adds systems; the risk involved in the water industry and sewer industries generally; and the Company's fundamental lack of size.

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

Staff and OPC spend a fair amount of time to try and convince you that Confluence Rivers with its fewer than 10,000 connections spread between approximately 70 water and sewer systems is only worthy of a much lower ROE.

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

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

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

Fundamentally as stated previously, Confluence Rivers is not an average water utility or sewer utility and does not have average business risk given its size and the nature of its business. Common sense would indicate it is not deserving of an average or below average industry ROE but consideration of the ROE that is recommended by Mr. D'Ascendis.

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

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

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

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

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

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

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

We'll move to Mr. Thompson with Staff.

MR. THOMPSON: Thank you, Judge.

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

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

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

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

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

MR. COOPER: First off, I don't know that that's a hard and fast rule. That's an approach that the Commission has taken at times in the past and essentially go the hundred basis points up and down from an average ROE. So I think if you consider the 9.6 to be an average for 2022 and you do that, then it ends up being about, you know, 8.6 on one end and 10.6 on the other. Again, I don't believe that you're bound by that, but I think that would be the range that would be referred to in that concept.

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

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

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

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

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

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

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

COMMISSIONER HAHN: Thank you.

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

MR. THOMPSON: Thank you, Judge.

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

In this case from Staff's point of view, this issue is worth $376,786. For the Public Counsel it's worth $435,392. So it's a big issue in terms of money. And let me just remind you that this is where I indicated a couple days ago that if you wanted to give this company some sort of reward, some sort of incentive for its business model of buying and rescuing distressed systems, then cost of capital is the place where you can readily do that by giving them some sort of adder to the return on equity that you select. Now, Staff is not recommending that you do that because the Company is purchasing systems at a rapid rate without that incentive today, so Staff doesn't see any need for that incentive. But I just simply mention that if you want to do that sort of thing, this is where you can do it rather than by letting them collect income tax from ratepayers that they're never going to pay to any taxing authority.

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

So you have, as Mr. Cooper told you, you have three very well-qualified experts that are going to appear and testify to you this morning, one of them by Webex and the other two physically here in the room. They are going to share with you the benefit of their knowledge and experience with respect to the three issues that we're always fighting about in cost of capital which are the capital structure, the cost of debt, and the return on common equity. Those three issues are the ones that come up in every case.

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

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

One of the methods they all use is the discounted cash flow method in which the current dividends divided by the stock price are added to a growth rate in the -- in the single stage or constant growth form in order to give us the number that's supposed to go out to perpetuity. The growth rate is supposed to go to perpetuity. Two of these experts will tell you based on the financial literature that it cannot be more than GDP. It cannot be more than the growth rate applicable to the economy as a whole. Remember, perpetuity means forever. This company may be growing like Topsy right now but it cannot grow like that forever. So in the single stage or constant growth model of the discounted cash flow, that growth rate cannot conceptually be higher than the GDP growth rate, that is, the growth rate of the economy as a whole.

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

What is that equity risk premium. It's supposed to quantify the degree of extra risk between the risk-free security, which is usually some sort of federal bond, and the security that's under review in the case, right. How much more risky is it. How much more of a reward should those investors get for putting their money in this more risky security, right. That's the equity risk premium. And it's usually calculated by comparing the risk-free rate to like the S&P 500 for example, right.

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

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

So I urge you to look at these three numbers because our witness will tell you and I think Mr. Murray will tell you this as well, that the numbers Mr. D'Ascendis has used are frankly way too high. How do you get higher results. You use higher inputs. What is the input that you can make higher. Well, it's the growth rate, it's the equity risk premium, it's the market risk premium. If those are inflated, then the result is going to be inflated. It's as simple as that.

Thank you very much. Any questions?

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

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

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

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

Let's starts with capital structure. At a high level, capital structure is fairly simple. It's the ratio of debt financing to equity financing. On its face, a relatively simple issue. The problem is that capital structure can be manipulated by a company if they want to boost their returns.

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

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

Now, let's just take a moment to note how close you guys had gotten to getting that hypothetical debt rate right on. You had debt -- ordered a hypothetical debt rate of 6.75. They were able to get a loan at 6.6. So congratulations. You guys nailed it.

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

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

So how do they do that. So see, we got 180 degrees. When the cost of the debt was really high, we want a big amount of debt. When the cost of debt is really low, we want very little debt. So how do we accomplish this. How did the Company do this. Well, it's pretty simple. They just didn't borrow as much as CoBank would have allowed them to borrow. They didn't borrow up to their limit. In other words, they could have had a much higher cost of debt, but chose, deliberately chose not to.

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

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

Now, Confluence claims it needs the cushion to allow future acquisitions, but that just means the Company is asking its current ratepayers to pay for future business expansion. This company should -- this Commission should not burden its current ratepayers with costly capital structure to pay for future expansion. Ratepayers should pay for their own cost of service. It's as simple as that.

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

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

Let's turn to the actual cost of debt. Again, this is generally supposed to be a very simple issue. Cost of debt effectively is the cost of net payments to Confluence -- sorry -- to CoBank versus net payments from CoBank. And the only question before the Commission is whether it should factor in a known and measurable credit being used -- being provided to Confluence from CoBank. And that patronage credit which was mentioned by Mr. Cooper in his opening, reduces the cost of debt from 6.6 percent to 6.23 percent. Not reflecting this credit means that you are providing the company more money than it needs to service its debt agreement.

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

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

Raccoon Creek, the second case, resulted in a 35.09 ROE based on the test year in that case. Sorry, in this case. And for Indian Hills the ROE was 12.79 percent. Now recall, that was the one where the Commission finally ordered a hypothetical cost of debt.

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

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

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

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

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

So that I think covers the basics of this argument, but just for a moment I want to talk about the big picture. Much of the discussion that has occurred during this case has centered on the idea that we need to incentivize Confluence to acquire more systems in this state. That's demonstrably not true. Twice now this Company has not been awarded an acquisition incentive for acquiring systems, but they continue to acquire systems rapidly in this state as their own counsel identified in opening. They have continued to aggressively purchase systems.

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

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

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

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

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

COMMISSION HOLSMAN: Judge, can you hear me?

JUDGE HATCHER: Yes. Go ahead, Commissioner Holsman.

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

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

JUDGE HATCHER: Yes, Louisiana.

MR. CLIZER: No, what was the question?

JUDGE HATCHER: What were the two states.

COMMISSIONER HOLSMAN: Okay.

JUDGE HATCHER: Kentucky and Louisiana.

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

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

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

COMMISSIONER HOLSMAN: Okay. Yeah, I would --

MR. CLIZER: -- like --

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

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

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

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

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

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

COMMISSIONER HOLSMAN: Okay.

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

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

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

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

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

COMMISSIONER HOLSMAN: Okay. I'll ask --

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

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

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

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

Confluence, go ahead and call your first witness.

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

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

DYLAN D'ASCENDIS

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

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

MR. COOPER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. COOPER:

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

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

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

A. I am a partner at ScottMadden, Inc.

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

A. I am.

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

A. Yes, sir.

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

A. Yes.

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

A. I don't.

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

A. They would.

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

A. They are.

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

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

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

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

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

JUDGE HATCHER: Mr. Thompson.

MR. THOMPSON: No questions, thank you.

JUDGE HATCHER: Mr. Clizer.

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

JUDGE HATCHER: Are there any commissioner questions?

COMMISSIONER HOLSMAN: Judge.

JUDGE HATCHER: Yes, Commissioner Holsman.

COMMISSIONER HOLSMAN: Yes. I have a couple questions.

JUDGE HATCHER: Yes, go ahead.

QUESTIONS

BY COMMISSIONER HOLSMAN:

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

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

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

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

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

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

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

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

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

MR. D'ASCENDIS: Thank you.

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

COMMISSIONER HAHN: Thank you.

QUESTIONS

BY COMMISSIONER HAHN:

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

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

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

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

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

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

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

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

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

COMMISSIONER HAHN: Thank you.

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

JUDGE HATCHER: Yes, Chairman. Welcome.

CHAIRMAN RUPP: I have a question.

JUDGE HATCHER: Go ahead.

QUESTIONS

BY CHAIRMAN RUPP:

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

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

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

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

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

A. It wouldn't be, no.

CHAIRMAN RUPP: Okay. Great. Thank you.

MR. D'ASCENDIS: Thank you.

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

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

JUDGE HATCHER: Mr. Clizer.

RECROSS-EXAMINATION

BY MR. CLIZER:

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

A. Yes, sir.

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

A. Yes, sir.

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

JUDGE HATCHER: And redirect.

MR. COOPER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. COOPER:

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

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

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

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

Confluence, go ahead and call your next

witness.

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

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

Confluence, your witness.

BRENT THIES

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

MR. COOPER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. COOPER:

Q. Would you state your name.

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

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

JUDGE HATCHER: Mr. Thompson.

MR. THOMPSON: No questions, thank you.

JUDGE HATCHER: Mr. Clizer.

MR. CLIZER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. CLIZER:

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

A. That's correct.

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

A. That's correct.

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

JUDGE HATCHER: Thank you, sir. So marked.

(OPC Exhibit 222C was marked for identification.)

BY MR. CLIZER:

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

A. Yes.

Q. All right. Because this is confidential I'm going to attempt to ask each of these questions in a manner that does not suppose the answer. I want you to pause for a second to ensure that the question answer does not breach confidentiality. And if we need to, we can then proceed en camera. Does that make sense?

A. Yes.

Q. Okay. Can you identify this document?

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

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

A. Got it.

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

A. Yes.

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

JUDGE HATCHER: So marked.

(OPC Exhibit 223 was marked for identification.)

BY MR. CLIZER:

Q. Keep that one handy for a second.

A. Gotcha.

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

MR. THOMPSON: Thank you.

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

BY MR. CLIZER:

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

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

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

A. I have it.

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

A. That's correct.

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

A. It --

Q. Hang on.

Is that going to be a confidentiality issue?

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

BY MR. CLIZER:

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

A. Uh-huh.

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

A. It is the same.

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

A. Correct.

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

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

Q. Hold on to it one more time.

JUDGE HATCHER: 224 so marked.

(OPC Exhibit 224 was marked for identification.)

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

BY MR. CLIZER:
Q. And for the record, Mr. Thies, can you identify 224.
A. That was the one you just handed me. Correct?
Q. Correct.
A. This is the calendar year 2019 annual report to the Missouri Public Service Commission for Indian Hill Utility Operating Company.
Q. And can you turn to page W1 for me.
A. Yes. Bear with me.
Q. Take your time.
A. Okay. I'm there.
Q. And again, it's the same question effectively. Line 20, the interest expense, would you agree with me that that's substantially the same as the interest expense included in the income tax return for 2019?
A. Yes.
Q. And you would agree with me again that's because for income tax purposes, the Company was reflecting interest expense deduction that is equivalent to what's included in the annual report, or nearly equivalent?
A. Yes.

Q. All right. Now, with regard -- sorry. Turning back to the 2018 annual report which has been marked 223.
A. Okay.
Q. Can you find page 9 for me.
A. 2018. Correct?
Q. Yeah.
A. Yes.
Q. And you would agree with me that page 9 is the interest expense, notes payable, bonds, bank loan, and other debts reported by the Company. Correct?
A. That's correct.
Q. And you would agree with me that the only note payable on that form is from Fresh Start Ventures, LLC. Correct?
A. That's correct.
Q. And that reflects a total interest paid during the year of $273,362. Correct?
A. That's correct.
Q. Which is the same amount included as the interest deduction in the Company's annual reports and as we have now established on the record, in the tax return. Correct?
A. That's correct.

Q. And if we turn to the 2019 report and I find the same page 9, you would agree me that it also lists a loan from Fresh Start Ventures, LLC as the only debt for the Company. Correct?
A. That's correct.
Q. And it also lists an interest paid during the tax year of $274,421 which is the same amount included on the interest deduction for the annual report and very nearly the same for the tax return. Correct?
A. Correct.
Q. All right. Are you familiar with the Fresh Start Venture loan?
A. I was responsible for making some of the payments and doing some of these calculations, so yes.
Q. Are you familiar with the Commission's prior ruing regarding that loan?
A. The financing case of approving it? What -- which ruling?
Q. Sorry. Specifically are you familiar with the Indian Hills rate case that concerned whether or not the loan was a proper transaction?
A. I'm -- I was employed by the Company in the middle of that case, so I'm familiar with the

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

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

JUDGE HATCHER: Yes, so marked.

(OPC Exhibit 225 was marked for identification.)

BY MR. CLIZER:

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

A. Yes.

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

A. That's correct.

Q. Can you turn to page 51 for me.

A. Okay.

Q. Actually let's start with page 50. You would agree with me that Finding of Fact 1 states, Indian Hills' cost of debt is significantly above market cost of debt for a distressed public utility. Indian Hills cost of debt is the result of dealings among entities closely interrelated with Indian Hills through chains of common ownership on both sides of the transaction as follows.

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

A. I do.

Q. If we turn to page 56.

A. Yes.

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

Is that correct?

A. That's correct.

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

A. It appears to say that, yes.

Q. And you would agree with me based on the annual report and the income tax return that we've viewed thus far, that the Company is including an interest expense deduction in its annual report and its income taxes based on this loan that the Company made to itself?

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

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

A. Correct.

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

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

A. Through common ownership it appears, yes.

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

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

Q. Understandable. It's a messy situation.

A. 2018 you said?

Q. Yes.

A. Okay. I've got it right here.
Q. The net operating loss identified on page W1 at line -- at line 23. Let me direct you first to page W1.
A. Got it.
Q. You would agree me the net operating loss there is listed as $283,299?
A. That's correct.
Q. And you would agree with me that the interest expense was $273,362?
A. Correct.
Q. And would you agree with me that if I removed the interest expense for the loan that you had to yourself, the actual total net operating loss of the Company would drop significantly. Correct?
A. To negative $10,000 it appears.
Q. And again I'm going to ask you to go to the 2019 annual report.
A. Okay.
Q. And again I'm going to ask you to go to page W1.
A. Okay.
Q. And you would agree with me in this case that line 23, the net income is $201,273?
A. Correct.

Q. And that the interest expense is $274,121?
A. That's correct.
Q. And you would agree with me that if I removed the interest expense for the loan that the Company made to itself, the Company's actual net total income would become positive?
A. Yes. Removing the interest expense would result in positive income.
Q. So but for the interest payments made on the loan the Company made to itself, the Company would have had positive income in the year 2019 for Indian Hills?
A. That's correct.
Q. Mr. Thies -- and I apologize, actually how exactly is it? Is it Thies or Thies?
A. Thies.
Q. Thies. I'm very sorry.
A. No problem.
Q. Mr. Thies, is the Company continuing to make interest payments on the Fresh Start loan?
A. No.
Q. Has the Company continued to make Fresh -- interest payments on the Fresh Start loan up through 2020?
A. Yes.

Q. Has the Company continued to record the interest deductions related to that payment on its tax returns?
A. Yes.
Q. Do you know what amount of the Company's total net operating losses are directly the result of the interest expense deductions that the Company has made for the loan that it made to itself?
A. No, I wouldn't know that.
Q. Would you be surprised to learn if the OPC developed that information?
A. No.
MR. CLIZER: All right. I think I'm going to move for the admission -- yes. All right. I think I'm going to move for the admission of 222C, 223, 224, and 225.
JUDGE HATCHER: You heard the motion of counsel. Mr. Cooper?
MR. COOPER: No objection.
MR. THOMPSON: No objection, Judge.
JUDGE HATCHER: All are admitted. I'll repeat for the record, Exhibit 22C [sic] which is confidential, Exhibit 223, 224 and 225.
(OPC Exhibits 222C, 223, 224, and 225 were admitted.)

JUDGE HATCHER: Mr. Clizer.

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

MR. THIES: Can I put these away?

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

JUDGE HATCHER: Where are we?

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

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

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

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

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

COMMISSIONER HOLSMAN: Judge, I have a question.

JUDGE HATCHER: Yes. Commissioner Holsman, go ahead.

COMMISSIONER HOLSMAN: Thank you.

QUESTIONS

BY COMMISSIONER HOLSMAN:

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

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

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

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

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

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

A.   I think the ratepayers are served by a healthy company. And, you know, in our conversations with CoBank, you know, which, you know, we appreciate being referred to them by the way, but our conversations with CoBank, you know, they recognize the challenges to our cash flow and for that reason are -- have agreed to interest-only payments for the first year. So the suggestion that, you know, we're hurting customers as opposed to simply trying to make the Company healthy, I don't agree with.

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

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

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

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

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

MR. THOMPSON: Yes, Judge.

RECROSS-EXAMINATION

BY MR. THOMPSON:

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

A. That is correct.

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

A. They were refinanced.

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

A. Yes.

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

JUDGE HATCHER: Thank you, Mr. Thompson.

Mr. Clizer.

RECROSS-EXAMINATION

BY MR. CLIZER:

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?

A. We have.

Q. And that interest deduction's directly

driving the net operating losses, are they not?
A. It is part of it.
Q. It is part of it. So the interest deductions on the loan that you made to yourself directly contribute to the net operating losses that you claim. Correct?
A. No recovery of net operating losses is being sought in this case.
Q. But the net operating losses directly impacts the tax issue that you testified as to last Friday?
A. True.
Q. And the net operating loss is one of the basis for why the Company's arguing it needs its current ROE. Correct? Not it's current, but, sorry, proposed ROE. Let me rephrase that so it's clear for the record.
You would agree with me the net operating losses are directly contributing to one of the reasons why the Company is counting it needs its proposed ROE. Correct?
A. Lack of cash, I'm not sure. I'd be reluctant to commit to that statement having not been the ROE witness.
Q. Well, you would agree with me that in the

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

A. Cash available, yes.

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

A. The lack of cash, yes. Yes.

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

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

A. Historically it did, yes.

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

A. I mean, I disagree with driving it. You know, there's a component of interest expense that helped to build to $9 million in net operating losses, but it sounds like you all have done the math; you can tell me how much of a portion that is I think. The ROE and, you know, from a prospective look at the Company, you know, what cash is available is driving our consideration of our own risk in the future, not necessarily, you know, what happened three and four years ago as a component of today's ROE.

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

JUDGE HATCHER: Redirect.

MR. COOPER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. COOPER:

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

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

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

A. That's correct.

Q. And obviously approval was given for that loan?

A. Correct.

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

A. Uh-huh.

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

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

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

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

Q. Let's start with that, yeah.

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

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

Correct?

A. Absolutely, yes.

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

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

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

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

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

JUDGE HATCHER: Yes.

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

JUDGE HATCHER: I will pause for a moment to hear from our commissioners who are on the Webex. Any --

COMMISSIONER HOLSMAN: No. No further questions, Judge.

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

(Off the record.)

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

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

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

MR. THOMPSON: Flow rate.

JUDGE HATCHER: Flow rate?

MR. THOMPSON: Flow rate.

JUDGE HATCHER: Thank you. The flow rate issue.

Mr. Thies, go ahead.

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

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

MR. THIES: Okay.

JUDGE HATCHER: Commissioner Glen Kolkmeyer, go ahead.

COMMISSIONER KOLKMEYER: Thank you, Judge.

QUESTIONS

BY COMMISSIONER KOLKMEYER:

Q. Thank you, Mr. Thies, for coming back.
A. Yeah.
Q. When did the Company get the loan with

CoBank?

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

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

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

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

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

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

A. Be on its own?

Q. They will be on its own?

A. They will not.

Q. They will not. Okay.

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

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

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

A. Yeah.

Q. -- that just left.

A. Yeah.

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

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

Q. You're not --

A. Yeah.

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

A. Correct.

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

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

MR. THOMPSON: I don't have any

questions. Thank you, Judge.

JUDGE HATCHER: Mr. Clizer.

RECROSS-EXAMINATION

BY MR. CLIZER:

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

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

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

A. That's correct.

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

A. That's correct.

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

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

Q. Okay. And each one filed individually until -- 2021 will be the last time; 2022 we start consolidating?
A. Correct.
MR. CLIZER: All right. Just want to make sure that was clear. Thank you.
JUDGE HATCHER: Thank you. Redirect.
MR. COOPER: Real briefly.
REDIRECT EXAMINATION
BY MR. COOPER:
Q. Just to kind of, I guess, specify a little bit on this consolidation.
A. Uh-huh.
Q. What you're referring to is the merger of those companies into Confluence Rivers as of what, December 31, 2021 or January 1, 2022. Correct?
A. That's correct, yes.
Q. And so for the year -- and that's why for the year of 2022, there would be just one tax return. Right?
A. That's correct.
Q. Okay. And you had a -- you were asked about the agreement to collect -- to pay interest only for the first year of the CoBank loan.
A. Correct.

Q. What was the genesis of that agreement?

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

Q. So that agreement provided you some --

A. Cushioning.

Q. -- breathing room? Yeah.

A. Absolutely, uh-huh.

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

A. We do not currently, no.

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

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

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

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

CHRISTOPHER WALTERS

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

DIRECT EXAMINATION

JUDGE HATCHER: Thank you. Your witness.

MR. THOMPSON: Thank you, Judge.

BY MR. THOMPSON:

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

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

Q. And how are you employed?

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

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

A. Yes, I am.

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

A. Yes.

Q. Do you have any corrections to that testimony?

A. I have -- while I cannot make the correction on the stand, I would note that the testimony list provided at the back of my direct testimony before my exhibits somehow is an incomplete list; it's missing about three years of testimony filings. I would speculate that there's between 30 and 50 more testimony filings between the most recent date on that testimony list to when I filed in this case.

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

A. Yeah, sure.

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

A. Yes.

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

A. They would.

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

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

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

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

JUDGE HATCHER: Mr. Clizer.

CROSS-EXAMINATION

BY MR. CLIZER:

Q. Good morning, Mr. Walters.

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

Q. Nice to meet you as well.

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

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

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

IT DIRECTOR: I can mute the screen.

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

MR. CLIZER: The alternative is if Staff happens to have his email address or something and can just provide it to me.

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

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

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

(Off the record.)

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

MR. CLIZER: Yes.

BY MR. CLIZER:

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

A. Understood.

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

A. Yes, I have.

Q. Do you recall statements by Mr. Woodsmall on behalf of Confluence that Staff and OPC's proposed revenue requirement would not provide sufficient cash flows to service its debt?

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

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

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

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

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

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

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

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

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

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

But in any event, no matter which metrics you look at, their credit rating would be a very strong investment-grade rating.

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

A. Yes.

Q. But Mr. Murray's --

A. Yeah.

Q. I'm sorry, please continue.

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

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

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

Q. Are you aware of Confluence's business model?
A. Generally, yes.
Q. And you would agree with me the Company promotes itself as buying troubled and distressed water or wastewater systems?
A. Yes.
Q. And you would agree with me though that Confluence is not the only U.S. water company to acquire distressed water and/or wastewater systems. Correct?
A. I would agree with that. In fact, I believe it to be the, what has been national trend over the last few years and is consid -- or expected to be the status quo going forward. I think there was a report that was issued by S&P Capital IQ or one of their divisions, Regulatory Research Associates, that state as much, that buying of distressed systems would be the path forward and has been the path for growth in recent years for water utilities.
Q. So you're saying that there are a significant number of water utilities that would be interested in expanding by buying distressed systems in the state of Missouri?
A. I just think -- I mean, that's the

national trend. I would expect that there be -- that would -- there would be interest in doing that around the country. I cannot necessarily specify which companies are doing that or at what rate. I just know that in one of the most cited sources in the regulatory arena, Regulatory Research Associates, part of S&P, they note that that as being the national trend, is expected to be the path going forward.
Q. Now, you were already earlier told me that you were listening to the opening statements. Correct?
A. Yes.
Q. And so you heard your own counsel, Mr. Thompson, suggest to the Commission that it could raise Confluence's rate of return as a mean of incentivizing the acquisition of troubled water and wastewater systems. Do you recall that?
A. I do.
Q. And I don't mean to drive a wedge between a witness and the attorney, but do you agree with that statement?
A. I generally do not agree that -- that to be the correct way for a couple reasons. And as an initial matter one of the primary underpinnings of

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

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

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

A. Yes.

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

A. Yes.

Q. Are you generally familiar with what I'm referring to in that circumstances?

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

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

A. Yes.

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

A. No.

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

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

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

MR. CLIZER: May I? No, okay.

JUDGE HATCHER: I was giving Mr. Thompson first crack.

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

JUDGE HATCHER: Mr. Clizer.

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

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

BY MR. CLIZER:

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

A. No.

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

A. I appear to have two emails.

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

A. Yes.

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

JUDGE HATCHER: So marked.

(OPC Exhibit 226 was marked for identification.)

BY MR. CLIZER:

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

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

Q. My apologies.

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

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

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

A. Got it.

Q. All right.

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

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

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

A. Yes.
Q. Are you familiar with this document?
A. I am.
Q. You would agree with me that this is a report generally provided by S&P Global to those interested in the investment community with regard to standard rates of return for various utilities, in this case a water utility?
A. Yes.
Q. And you would agree with me that this is the kind of document that you, yourself as an expert, would rely on in establishing or determining the reasonableness of a rate of return. Is that correct?
A. Yeah. These kind of reports serve as an observable benchmark to assess the reasonableness of a -- the estimate cost of equity capital, yeah.
Q. And you would agree with me that this says the water utility rate case decisions for 2022 has an average rate award of 9.61 on that front page. Correct? At the bottom of the graph. Not the graph, apologies, the table.
A. Yes.
Q. Now, I believe that you reference this in testimony. Is that correct?
A. I do.

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

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

Q. Let's hold that thought.

A. Okay. Sorry.

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

JUDGE HATCHER: So marked.

(OPC Exhibit 227 was marked for identification.)

BY MR. CLIZER:

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

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

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

A. Yes.

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

A. Yes. I would agree with that.
Q. So you would agree with me that since 2022 the average ROE for water utilities in this country have decreased according to this S&P Global report?
A. Yeah. It looks like it's decreased by 21 basis points.
Q. I'm not sure this is necessary, but S&P Global sends out quarterly reports for large utilities like electric and gas. Correct?
A. They do.
Q. But they don't send out quarterly for water?
A. I think it's a less frequent report, although, I mean, this report would indicate that it's been released three months since the last one, so three months are in a quarter so it's, I guess, relatively quarterly. I guess it would also be dependent on how many -- there are less frequent water rate cases so that could be a reason why they don't have as frequent of reports.
MR. CLIZER: All right. I will move for the admission of 226 and 227.
JUDGE HATCHER: You've heard the motion. Are there any objections?
MR. THOMPSON: No objection.

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

(OPC Exhibits 226 and 227 were admitted.)

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

JUDGE HATCHER: Yes.

MR. CLIZER: Thank you.

BY MR. CLIZER:

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

A. Generally, yes.

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

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

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

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

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

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

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

A. Yeah, I would agree.

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

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

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

A. It is not.

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

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

Q. And can you turn to page W1 for me.
A. W1.
Q. It's got an odd numbering system. It starts with regular numbers and then it switches to Ws. So it's about the sixth or seventh page in.
A. All right. There's W3, W2. W1.
Q. All right. You found it?
A. I have.
Q. Now, you would agree with me that it lists total revenues at the top of about $537,000?
A. Yes.
Q. And lists plant operating expenses at line 7 at $161,000?
A. Yes.
Q. So you would agree with me that the revenues being generated by the Company far exceeded the actual cost to operate its plant according to this annual report. Correct?
A. Yeah. Based on those two figures, I would agree with that.
Q. Now, I ran through this exercise earlier, but I'll just repeat very quickly, you agree with me the net operating income loss at line 23 is 201,273. Correct?
A. Yes.

Q. And that the income taxed expense -- sorry -- interest expense, the interest expense at line 20 is 274,000. Correct?
A. Yes.
Q. You agree with me that if we remove that interest expense, this company would be making a profit. Correct?
A. Yes.
Q. Did your analysis take into consideration the fact that the Company had been making interest deductions for a loan it had made to itself?
A. I don't -- I mean, in what context? I guess I don't -- I don't think that I -- it did.
Q. Mr. Walters, did you consider or listen -- did you listen to testimony from Mr. D'Ascendis that identified that whether or not the Company needed more money. Do you recall that?
A. Vaguely, yes.
Q. And again, I'm going to attempt to paraphrase this. You would agree with me Mr. D'Ascendis suggested that the Company does not request -- need to request additional financing so it makes no sense for them to acquire additional debt financing. Do you agree with me that that's a fair paraphrasing?

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

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

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

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

A. Yeah. I believe the Company would need external capital to fund acquisitions.

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

A. I don't recall honestly.

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

JUDGE HATCHER: So marked.

(OPC Exhibit 228C was marked for identification.)

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

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

JUDGE HATCHER: Mr. Clizer.

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

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

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

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

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

MR. WALTERS: Okay.

MR. CLIZER: That is the right document.

MR. WALTERS: Okay. Apologies.

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

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

And here is the schedule that I think we are following. We'll finish up with Mr. Murray. I'm sorry. We will finish up with Mr. Walters. We will go to Mr. Murray. And then we will decide if we are going to go to the flow rate issue. Is Mr. Lyons only available today?

MR. WOODSMALL: Yes, your Honor.

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

(off the record.)

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

BY MR. CLIZER:

Q. Mr. Walters, are you there?

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

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

A. Sure.

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

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

recall that in your testimony?
A. Yes, I do.
Q. You did not mention in your testimony the ROEs that were awarded in those cases, did you?
A. I don't believe so.
Q. Are you familiar with what their return on equities that were awarded in those cases are?
A. I believe the awarded ROE in Kentucky was 9.9 percent relative to the Company's request of 11.8. I believe the -- I'm not -- I can't say for certain what the Louisiana one was. I thought I heard someone mention earlier today that it was 9.5, but I could be mistaken.
Q. That's okay. It's actually contained in an attachment to Mr. Murray's testimony, so I will put that in briefing. Thank you though.
Now, we were attempting to discuss a confidential document that I had sent to you. Do you have that document up? This would be the presentation from CSWR to U.S. Water Systems. It has a long name in the title, but I don't want you to read that name.
A. Sure. Yes. I have that file open.
MR. CLIZER: Now, I cannot recall if I moved to mark this exhibit or not. In any event, I

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

MR. THOMPSON: 228.

JUDGE HATCHER: 228.

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

JUDGE HATCHER: Do you have one for yourself?

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

BY MR. CLIZER:

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

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

A. Yes.

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

A. Generally, yes.

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

A. Yes.
Q. And they own both the LLC and the Inc. version, do they not?
A. I believe so. I'm looking at the corporate entity organizational chart that was filed in Mr. Cox's testimony. And the LLC version is directly underneath U.S. Water whereas Central States Water Resources, Inc. is up horizontal or lateral. But generally I would agree with you, yes.
Q. Would you find page 65 of this document for me. Actually we'll start on page 64.
A. I think I'm there. I apologize, the PDF version of this is -- some of the font is hard to read.
Q. Understandable. It would be the slide titled, CSWR's proposed use of third-party debt.
A. I'm there.
Q. Again, without going into any of the information which is confidential, you would agree with me that this slide outlines the Company's proposal for future debt?
A. Can I take a moment to review this please?
Q. Of course. Please do so.
A. And just so I answer honestly, could you repeat the question.

Q. You would agree with me that this slide is outlining Central States Water Resources' proposed use of third-party debt?
A. I would agree.
Q. And if you flip to the next page on 65, it outlines the specific information with regard to the state of Missouri. Is that correct?
A. Yes.
MR. CLIZER: And at this point, Judge, I think I've hit the limit and I would like to go en camera very briefly.
JUDGE HATCHER: Okay. Before we do that, the Presiding Officer would like to review the Commission's stance towards confidential information, acknowledging that confidential information is necessary to run these businesses but also the Commission's strong preference that discussions and the evidentiary hearing remain open to the public.
Is there any way that, Mr. Clizer, you could ask the question pointing to a row and column and allow the commissioners to read the confidential document while the witness confirms? If not --
MR. CLIZER: Let me try.
JUDGE HATCHER: Okay.

MR. CLIZER: Let me make a -- I'll make a good faith effort. Let's see what I can do.
BY MR. CLIZER:
Q. All right. I want to direct your attention to the bottom of the table labeled Debt Covenants. Do you see that, Mr. Walters?
A. I do.
Q. And would you agree with me that line 2 identifies what the Company's projected total debt-to capitalization ratio is moving out to 2026?
A. Yes.
Q. I'm working on it, hold on a second.
You would agree with me that the Company appears to be maintaining a consistent or plan to maintain a consist debt-to-capitalization radio -- ratio moving out to 2026?
A. Relatively, yes.
Q. Without divulging the numbers in there, you would agree with me that the ratio that they are proposing moving forward would be imprudent?
JUDGE HATCHER: Mr. Clizer, did you say improvement?
MR. CLIZER: Sorry, I meant imprudent.
JUDGE HATCHER: Oh, imprudent. Thank you.

BY MR. CLIZER:
Q. And I will repeat the question just for the sake of the witness. You would agree with me, without divulging the numbers themselves, that maintaining the debt-to-equity ratio that is portrayed here through 2026 would most likely be imprudent?
A. Yes. And I don't know if you want me to provide any kind of context as to why, but I think that I would agree with you that that would not be -- or that would be an imprudent capitalization.
MR. CLIZER: I would certainly like to have him explain why, but I am not sure how that's going to work without going en camera unless Mr. Walters -- Judge, help me out here.
JUDGE HATCHER: If Mr. Walters answered a hypothetical -- if Mr. Walters gave you a more academic answer, would that be the answer that you need to cite in your briefs? But we can go en camera, that's fine.
MR. CLIZER: Can we just go en camera very briefly? I apologize. I know it's the Commission's preference.
JUDGE HATCHER: No, that's fine. We gave

it a shot.

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

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

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

JUDGE HATCHER: We are now livestreaming and back. Mr. Clizer.
MR. CLIZER: I always forget to do this, I apologize. I will move for the admission of the exhibits with --
JUDGE HATCHER: I've got you. Is there any objection to Exhibit 228 Confidential. Hearing none, it is so admitted.
(OPC Exhibit 228C was admitted.)
JUDGE HATCHER: Yes, Mr. Cooper.
MR. COOPER: Thank you, your Honor.
CROSS-EXAMINATION
BY MR. COOPER:
Q. Mr. Walters, I'm going to try to do this I guess without going en camera, but I'm going to follow up on the exhibit that you probably still have in front of you, the 228C. Do you still have that up?
A. Yes. Yes. The one that we just went over?
Q. Yes, exactly.
A. Yes, I've got it.
Q. Mr. Walters, you have -- I assume you have no background coming into this questioning as to what this document represents. Is that correct?

A. Not entirely, no.
Q. So other than having read the title to the document, I mean, you really don't what purpose precisely it was prepared for. Correct?
A. Not exactly, no. That would be fair.
Q. And given the date of the document, May of 2022, you would agree with me that it was a document that appears to have been created prior to the issuance of the current CoBank debt. Correct?
A. Yeah. I believe that was December '22, so yeah, I would agree with that.
Q. And so would it be reasonable to assume that this is a planning document?
A. Having not reviewed this document in its entirety, yeah, I think that that would be relatively a fair assessment of what it might be.
Q. Right. And a planning document that would have been created at a moment in time. Correct? Because it reflects 2021 numbers and as well as some 2022 numbers that wouldn't have been even complete at that point. Correct?
A. What would not have been complete, I'm sorry?
Q. Financial year 2022 would not have been complete as of May of 2022.

A. Thanks for the clarification. I would agree with that.
Q. And given that, and again, given that this preceded the current debt, is it reasonable that this mapped out projections related to that, that debt that was being considered at the time?
A. I don't know that I completely grasp your question. Could you repeat that for me please.
Q. Well, we've talked about the fact that the document is dated prior to the issuance of the current debt that the Company has. Correct?
A. Correct.
Q. So at that point in time they were really working with no third-party debt, no third-party debt. Correct?
A. Yeah. I believe so, yeah.
Q. And so step one is to figure out what the new debt, if it becomes new debt, would look like on a going-forward basis. Correct?
A. Step one relative to? I mean --
Q. To the future.
A. -- to the overall planning process?
Q. Yeah, sure.
A. Yeah, I think that's reasonable.
Q. Okay. So is there any representation on

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

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

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

A. Correct.

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

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

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

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

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

A. Okay.

Q. Okay. And if we look at this document and the projections -- well, let me back up. Is EBITDA, is that used sometimes to be a representative or a way to check a company's ability to cover its debt service?

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

Q. And --

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

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

A. Yes.

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

A. Yes.

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

A. Less than.

Q. And a fair amount less than. Correct?

A. Without divulging any more information, yes.

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

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

Q. Correct.

A. Okay.

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

A. No, I am not.

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

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

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

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

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

wouldn't flush on the weekends, that DNR ultimately indicated, because of the lack of pressure in that system, it should have been on a boil order for 20 years?
A. I don't know -- I don't know that I remember the specifics of how degraded the system was. I know that it was a distressed system. I would not disagree with that.
Q. And the debt that I think you were -- you were focused on in that case, is it your understanding that that debt was debt that was approved by the Commission, the Missouri Commission?
A. I don't recall the conversation about the debt. Can you point me to something to --
Q. Well, I think there were some questions regarding the interest that would have been reflected on the annual report that you were looking at. Does that ring a bell?
A. Yeah. I think as -- I think it was framed or presented along with the amount of interest relative to the net operating losses accrued. Is that the conversation?
Q. I think so.
A. Okay.
Q. And would you -- is it your understanding

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

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

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

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

COMMISSIONER HOLSMAN: No questions, Judge.

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

MR. THOMPSON: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. THOMPSON:

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

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

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

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

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

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

JUDGE HATCHER: Thank you, Mr. Walters.

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

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

DAVID MURRAY

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

DIRECT EXAMINATION

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

BY MR. CLIZER:

Q. Good afternoon.
A. Good afternoon.
Q. Could you please -- could you please state and spell your name for the record.
A. David Murray, last name spelled M-u-r-r-a-y.
Q. And have you prepared or caused to be prepared direct testimony in this case which has been premarked as 209 and 209C for the confidential version, rebuttal testimony that's been premarked 210 and 210C for the confidential version, and surrebuttal testimony that's been

premarked 211, 211C --
A. Yes.
Q. -- for the confidential version?
And are the answers that you gave in that testimony true and correct to the best of your knowledge and belief?
A. Yes.
Q. And do you have any corrections to make?
A. Yes, a couple.
Q. Hold on. I will go ahead and mark OPC Exhibit 229 for Mr. Murray's errata sheet.
JUDGE HATCHER: So marked.
(OPC Exhibit 229 was marked for identification.)
MR. MURRAY: You want me to go ahead and read those into the record?
MR. CLIZER: Hold on.
JUDGE HATCHER: Mr. Clizer's going to hand those out and probably ask you to read them and then we will take a quick poll of everyone and enter it into the record.
BY MR. CLIZER:
Q. Mr. Murray, is this document the errata sheet to your testimony?
A. Yes, it is.

Q. And does this document outline the changes that you believe need to be made to your testimony?
A. It does.
Q. Can you please walk through what those changes are?
A. Yes. In my direct testimony on page 2, line 2 I indicate that I recommend and authorized ROE of 9.65 percent based on a range of 9.1 to 9.9. The 9.1 should be corrected to 9.25. And corresponding -- correspondingly, the same thing in my rebuttal testimony on page 2, line 4, I misspecified the range there as well. It said 9.1 to 9.9. Needs to be changed to 9.25 to 9.9.
Q. Are there any other changes that need to be made to your testimony?
A. No.
Q. So if I were to ask you the same questions posed in your testimony with re -- taking into consideration these changes, would your answers be the same or substantially similar to today?
A. Yes.
MR. CLIZER: All right. Your Honor, I will move for the admission of 209, 209C, 210, 210C, 211, 211C, and 229 which are respectively the direct testimony, rebuttal testimony, surrebuttal testimony

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

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

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

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

JUDGE HATCHER: Mr. Thompson.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q. Good afternoon, Mr. Murray.

A. Good afternoon, Mr. Thompson.

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

A. Yes, I do.

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

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

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

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

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

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

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

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

So in my opinion, in order to get an

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

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

A. Yes.

Q. How many versions?

A. I just used the multi-stage DCF.

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

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

And so the point being is -- is that allowed me access to equity analysts discreet estimates of dividends per share, earnings per share, for as long as possible, which typically, you know, carries out to 2027, so about five years. And so there's no -- you know, there's no implicit growth rate. You could calculate a growth rate, but that was not my concern. My concern was to capture analyst consensus estimates of what dividends per share, earnings per share were for the companies for each -- even the first two quarters of -- or the last two quarters of this year, but then annually after that, until though discreet estimates were no longer available.

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

A. I am.

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

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

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

MR. MURRAY: I have it up here.

And he did a couple versions. Correct? A constant growth, a sustainable growth, and a multi-stage.

BY MR. THOMPSON:
Q. So three different ones?
A. I believe so. The multi-stage he used a terminal growth rate of 4 percent. That's the constant growth stage.
And in the constant growth DCF, looks like he had an average sustainable growth rate of 5.99 percent. Then he also did a constant growth using just an average of five year -- of analyst-projected earning per share growth over -- compound annual -- annual growth over the next five years, which I do not agree with by the way -- but he used a 6.72 percent.
Q. In that constant growth model, the growth rate is supposed to go out to perpetuity. Isn't that correct?
A. In a constant growth, yes.
Q. And you said you don't agree with what he did. Why is that?
A. Well, because -- yeah. He actually did something, you know, pretty similar to what a lot of company witnesses do is I think Mr. D'Ascendis did it as well, is he just took an average of the five year compound annual growth rate consensus estimates of equity analysts of earnings per share. And that's

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

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

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

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

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

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

Q. How about the multi-stage?

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

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

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

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

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

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

A. No. No.

Q. Do you think that they are unreasonably high?

A. Yes. Some are -- some are totally

irrationally high.

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

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

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

A. No. Those were bad inputs.

MR. THOMPSON: Thank you. No further questions.

JUDGE HATCHER: Mr. Cooper.

CROSS-EXAMINATION

MR. COOPER: Thank you, your Honor.

BY MR. COOPER:

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

A. Illegitimate.

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

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

A. That's correct.

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

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

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

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

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

A. I do.

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

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

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

fairly consistent range. Would you agree with that?
A. The mid nines. I mean, yeah, there's the highest of 9 point -- I mean, it speaks for itself.
Q. Yeah. Yeah. Do you know by chance what was going on with Aquarion Water of Connecticut? Have you looked into that?
A. I'm just generally familiar from, I think, attending the SRFA conference. I think there was a commissioner there from Connecticut and I, you know, heard people complaining about, oh, we got a low-authorized ROE in Connecticut. And, yeah, it -- there was some rumblings about, you know, maybe some, you know, I don't know if they adjusted it due to service issues. I don't recall the details.
Q. But you had some information that there was -- there was more going on there, right, in terms of how they landed at 8.7 percent ROE than just a standard?
A. Yeah. There's always more details to all these numbers.
MR. COOPER: I don't have any further questions, your Honor.
JUDGE HATCHER: Thank you. That'll take us to commissioner questions. Chairman Rupp.
CHAIRMAN RUPP: I just have one.

QUESTIONS

BY CHAIRMAN RUPP:

Q. Good afternoon, Mr. Murray.

A. Good afternoon.

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

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 over and over and over.

CHAIRMAN RUPP: Okay. Thank you.

COMMISSIONER HOLSMAN: Judge, I have a question.

JUDGE HATCHER: Yes, Commissioner Holsman.

COMMISSIONER HOLSMAN: Thank you.

QUESTIONS

BY COMMISSIONER HOLSMAN:

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

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

So, but anyway, so, but I understand and that's, you know, the zone of reasonableness, I went -- I went through that. That happened in 2004 in Missouri Gas Energy case. That's when that was -- that's when that was established, plus or minus 100 basis points and it was upheld by the appeals court. But anyway. And it's been cited consistently.

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

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

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

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

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

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

Q. Okay. Let me kind of ask a similar

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

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

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

A. Well, and that's -- yeah. You ask a great question. And I thought that was a -- you know, obviously when -- when CSWR first, you know -- I say CSWR; I think that's their -- that's their doing business as name, there's been some confusion on that. But CSWR, you know, came in and filed its first rate case in 2016 for Hillcrest. And, you know, at that time, I mean, a lot of were, you know, concerned about, you know, this is something that's going to require a significant amount of investment, customer bills are going to go up tremendously, you know, is -- is the cash flow going to follow, is the financial performance going to follow.

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

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

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

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

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

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

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

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

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

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

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

Q. So is it -- is it a way -- so from the ratepayers' perspective, would the ratepayer be better served if Confluence had taken the entire amount of debt offered, or is the ratepayer better served if that debt would be serviced faster?

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

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

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

MR. MURRAY: Thank you.

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

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

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

JUDGE HATCHER: And, Mr. Cooper.
MR. COOPER: Sorry, your Honor.
RECROSS-EXAMINATION
BY MR. COOPER:
Q.   Just one point of clarification. Based upon Commissioner Holsman's question, you made a specific reference to systems subject to the rate case. Do you remember that?
A.   Yes.
Q.   And by that I take it you mean systems that were a part of Confluence Rivers as of January 31st of 2023. Correct?
A.   That's my understanding, yes.
Q.   Yeah. And so when you talk about your credit rating and at that, essentially at that point in time, it necessarily ignores some of the reality that I talked about in my opening statement today, right, that there's already four additional systems to what was there as of January 31st. So those are -- those are part of the company as --
A.   Yes. I don't believe --
Q.   -- we sit here today. Correct?
A.   Yeah. I don't believe the current -- the ratepayers to the current system should have to pay a higher cost of capital for additional acquisitions.

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

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

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

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

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

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

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

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

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

A. No. This was very --

Q. -- the small, distressed system?

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

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

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

Q. But from where they came from, Mr. Murray, you remember where they were when the system was first purchased. Right?

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

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

A. Yes.

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

JUDGE HATCHER: And redirect.

MR. CLIZER: Thank you.

REDIRECT EXAMINATION

BY MR. CLIZER:

Q. Good afternoon.

A. Good afternoon.

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

A. Yes.

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

A. Yes.

Q. And I think that you mentioned that the remaining effect of the accumulated interest expense was about 5.5 million. Is that correct?
A. That's correct.
Q. Did you develop a worksheet to calculate that amount?
A. Yes. I looked at the annual reports that were filed with PSC, relied on some DR responses from the Company, and also, you know, checked some of them against the tax returns that I had available to determine the total interest paid.
MR. CLIZER: Your Honor, I'd like to mark Exhibit 230.
JUDGE HATCHER: So marked.
(OPC Exhibit 230 was marked for identification.)
BY MR. CLIZER:
Q. Mr. Murray, is this the worksheet that you were just referencing now?
A. Yes, it is.
Q. So this is something that you've developed?
A. I did personally, yes.
Q. Can you please, again, just high level explain how you came to these numbers?

A. I pulled the information from 2016 through 2020 directly from the PSC annual reports for each of these utility operating companies. For 2021 because the Company -- the utility operating company no longer filed independent, individual PSC annual reports, I relied on information that the Company provide to me in response to a data request, so their financial statements. In 2022 I relied on response from the Company to one of my data requests.

And just to clarify, the Confluence when it says consolidated, you know, Confluence never had a Fresh Start loan, only Hillcrest, Raccoon Creek, Indian Hills and Elms Hills. So that $1,110,000 is an addition of all the interest from those legacy utility operating companies.

Q. And so this document shows how to calculate the total interest expense that the Company has claimed on its financial reports effectively or income taxes?

A. Yes. They match up pretty close.

Q. What would happen to the Company's net operating losses if you backed out the $5 million, or I'm sorry, $5.5 million roughly of income tax expense?

A. It would be $5.5 million less.

Q. Is it reasonable to have included that income tax expense as part of a calculation of the Company's net operating losses?

A. I'm not a tax lawyer. It is a loan between, you know, the same investors that were equity investors in CSWR and equity investors in Fresh Start. I have characterized it as an illegitimate loan. It's not a, you know, separate competing interest, financial interest. They're the same folks. And so I -- I don't know that I could do it myself. I don't know that I could deduct an interest expense if I was paying myself. I'll just leave it at that.

MR. CLIZER: Before I forget this time because I have a tendency to, I'll go ahead and move for the admission of Exhibit 230.

JUDGE HATCHER: You've heard the motion for the admission of Exhibit 230. Any objections? Hearing none, it is so admitted.

(OPC Exhibit 230 was admitted.)

BY MR. CLIZER:

Q. Let's talk about the discount cash flow method that was -- that was discussed between you and Staff counsel. Do you recall that discussion?

A. Yes.

Q.   Is there any way that you can just put those growth rates in perspective for a more lay person? You threw a lot of numbers around. Is there some way that you can help me understand? Something to compare them to?

A.   I just -- you know, actually I'll just think about some of the studies on the composition of income -- income returns versus capital gains returns for utilities. And usually the, you know, the income returns, at least for a period of 1970 to like 2010, the income returns made up about two-thirds to three-fourths of the total returns for utility stock investors. So that means about a third of their return was from capital gains.

So if you had, you know, a dividend yield of 6 percent and you're going to have, you know, 3 percent capital gains, so, you know, for, you know, two-thirds of your returns being for dividend yields, you can get, possibly get a 3 percent growth rate. I mean, it's not complicated math over the long term. And it's -- you know, and that's what utility stocks are known for. I mean, obviously there's a different situation with this company, but that's for proxies.

Q.   And Mr. D'Ascendis's growth rates are substantially higher than that. Correct?

A. He assumes that, yeah, that the Company's going to grow at say 11 percent perpetually into the future.

Q. I'm going to turn to a couple of questions that you got from the Bench, specifically from Commissioner Holsman. Do you recall those conversations?

A. Yes.

Q. And I think the first conversation concerned whether or not Confluence's business model would make them more risky. Do you recall that conversation?

A. Somewhat.

Q. Has history borne out that Confluence's business model actually is risky?

A. For the systems that have been rehabilitated, the financial performance has been fine. For, you know, as far as going out and acquiring additional underperforming systems, I mean, absent the interest issue, yeah. They -- they incur -- you know, they have negative free cash flow, there's no doubt about that. They need capital contrary to what Mr. D'Ascendis said earlier. They need capital.

And -- and so yeah. There's -- you know, it's -- it's a -- it's a long -- I mean, it's a lag. I mean, who knows when the lag would be. I mean, they might want to be bought out at some point or -- or maybe they'll continue to invest. But it's -- you know, they -- the previous investors, you know, turned a pretty good profit on this business model. So it's not -- it's not like they're selling to other investors at a discount of what they invested, not even close.

Q. So for the systems that have come in for a rate case, the system has worked; they've been able to be made whole?

A. Yes, no. I said the financial performance of those utility operating companies have been just fine.

Q. Actually I'm going to piggyback on that for a second. I'm going to jump around. I'm going to talk about the discussion you had with Staff counsel on recross-examination. And a lot of that had to do with the question of whether or not current ratepayers should be paying for future expansion. Do you recall that?

A. Yes.

Q. Now, if I understand your testimony correctly, you said basically that the existing

Hillcrest, Indian Hills, Raccoon Creek systems have been producing a large amount of the cash flow for the Company currently or in -- recently. Is that right?

A. Their earnings before interest, taxes, depreciation, and amortization would justify almost the entire $7 million debt issuance from CoBank. The other systems are bringing those -- you know, those -- those customers that paid those higher rates, they're bringing that financial performance down for Confluence on a consolidated basis.

Q. And that cash flow's going up the chain to Central States Water Resources as well?

A. The financial performance. They're not making distributions to -- to their investors.

Q. But is that financial informance [sic] benefiting other states at this point?

A. It's -- yeah. It's something I have in my testimony, and it's confidential. I don't --

Q. Ah, never mind then. Apologies. I did not know that I was trespassing there. I will cite to it in brief.

So jumping back to the conversation you had with Commissioner Holsman, would ratepayers be better served. Just at a high level, which is generally higher, cost of equity or cost of debt?

A. Within the same capital stack, within the same company, cost of equity's going to be higher than the cost of debt.

Q. So all other factors being equal, a higher cost of -- sorry -- a higher equity ratio is going to result in a higher cost to customers?

A. Yes.

Q. What benefit do customers receive from having a higher equity ratio?

A. I mean, you can have more financial flexibility, but there's a price to that financial flexibility, you know, to -- you know, so a little bit of a higher equity ratio allows for some financial flexibility. But again, is that for your current customers or is that for your future growth strategy.

Q. And that's really the central point of your argument, correct, that current customers shouldn't be subsidizing future customers. Right?

A. Yes.

Q. Mr. Murray, you've looked at a lot of different cases, lot of different utilities for the OPC. Right?

A. OPC and Staff, but yes.

Q. And Staff. It's not uncommon for utilities to be declaring that operating loss for tax income purposes?
A. Different reasons, yes.
Q. For those utilities that have been in a net operating loss for tax income purposes, have they still either refinanced debt or issued new debt?
A. Generally, yes.
Q. So it's not uncommon at all for a utility to issue new debt despite having a net operating loss?
A. I mean, that's been the case with bonus depreciation. I mean, that's -- yeah, that's -- that's happened frequently.
MR. CLIZER: I think I have no more other questions. Thank you.
JUDGE HATCHER: Thank you, Mr. Murray. You are excused subject to recall.
We are down to one issue for today. That is the water flow rate. I am tempted to take a quick break now. We've been going for an hour and 20 minutes. About 10 minutes and -- yes, absolutely. We're on break. Let's go off the record.
(off the record.)
JUDGE HATCHER: The hour of recess

having expired, let's go back on the record. We are rejoining the Confluence general rate case, WR-2023-0006 and we are on the issue of water flow rate. I believe the parties intend to start with mini opening statements, and we'll go ahead and get started with --

MR. CLIZER: I waive.

MR. WOODSMALL: Your Honor, if it's good for you, I think we're all going to waive.

JUDGE HATCHER: Hearing no objection, mini opening statements will be waived. We'll go ahead and have the Company call its first witness.

MR. WOODSMALL: Thank you. Mr. Lyons, can you hear me?

MR. LYONS: Yes, I can. Good afternoon.

MR. WOODSMALL: Okay. Your Honor, we'd call Mr. Lyon -- or Tim Lyons to the stand please.

JUDGE HATCHER: And, Mr. Lyons, please raise your right hand.

TIMOTHY LYONS

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

DIRECT EXAMINATION

JUDGE HATCHER: Thank you, sir. Your witness.

MR. WOODSMALL: Your Honor, before I move for his admission of his testimony, I'd just like to level set a bit. As you'll recall, the three parties here all agreed to waive cross-examination of each other's witnesses. So other than some foundational, corrective type matters, we're going to waive cross-examination and just take Commission questions. Is that your understanding?

JUDGE HATCHER: No. I'll take that understanding. I thought it was AMI.

MR. WOODSMALL: AMI was addressed by my stipulation this morning.

JUDGE HATCHER: Right. And so that was waived. That's in the books so to speak.

MR. WOODSMALL: Right.

JUDGE HATCHER: And we're going to have the same treatment for water?

MR. WOODSMALL: Correct.

JUDGE HATCHER: Okay. New to me, but I like it.

MR. WOODSMALL: Okay. Thank you, your Honor.

BY MR. WOODSMALL:

Q. Would you spell your -- would you state your name and spell it please.

A.   It's Timothy Lyons, last name is L-y-o-n-s.
Q.   And by whom are you employed and in what capacity?
A.   ScottMadden and I'm a partner.
Q.   And have you been retained to provide testimony in this case by Confluence Rivers Utility Operating Company?
A.   Yes, I have.
Q.   And you filed direct, rebuttal, and surrebuttal testimony. Is that correct?
A.   Yes, that's correct.
Q.   And for your information, those have been is marked as Exhibits 12, 13, and 14. Do you have any corrections to make to that testimony?
A.   No, I do not.
Q.   And if I were to ask you the same questions here today, would your answers be substantially the same?
A.   Yes, they would.
Q.   And are those true to the best of your knowledge, information, and belief?
A.   Yes, they are.
MR. WOODSMALL: Your Honor, I'd move for the admission of Exhibits 12, 13, and 14 and tender

the witness for cross-examination.

JUDGE HATCHER: Thank you. You heard the motion of counsel. Exhibits 12, 13, and 14, are there any objections? Seeing none, they are so admitted.

(Company Exhibits 12, 13, and 14 were admitted.)

JUDGE HATCHER: The witness has been tendered. We'll go to Mr. Thompson.

MR. THOMPSON: Mr. Vandergriff is representing Staff on this issue, Judge.

JUDGE HATCHER: My apologies. Mr. Vandergriff.

MR. VANDERGRIFF: We waive cross-examination.

MR. CLIZER: We've all waived.

JUDGE HATCHER: Oh, gosh dang it.

MR. WOODSMALL: I probably shouldn't have said it that way.

JUDGE HATCHER: No, no, no, no, no. You just said it just ten seconds ago. My apologies. Staff waives cross-examination. I'll speak on behalf of OPC; they waive cross-examination. Are there any commissioner questions? I know that we do have commissioners on the Webex. We'll wait just a moment.

Okay. Give me just a second. I need to review this real quick. I'm still getting it in front of me, Mr. Lyons.

QUESTIONS

BY JUDGE HATCHER:

Q. Figure 1 of your surrebuttal testimony shows Average Customer Usage by Service Area. Is this the same data that was provided to Staff?

A. Yes, it was. These are part of our work papers.

Q. Just to confirm, Figure 1 represents the 12 months ending December 31st, 2022?

A. Twelve months ending June 30th, 2022.

Q. What were the source documents you relied on for Total Water Usage column?

A. These came directly from the Company. Just we were provided a spreadsheet that had all of the bills and water usage.

JUDGE HATCHER: Okay. Thank you. We have been joined by a commissioner in person, so I will just ask once again if there's any commissioner questions. Hearing none, I have had questions, so we will go ahead and go through recross and then redirect. Mr. Vandergriff?

MR. VANDERGRIFF: No. We don't have any questions.

JUDGE HATCHER: Mr. Clizer.

MR. CLIZER: No questions. Thank you, your Honor.

JUDGE HATCHER: Confluence.

MR. WOODSMALL: Just one.

REDIRECT-EXAMINATION

BY MR. WOODSMALL:

Q. Mr. Lyons, do you recall being asked by the Bench the date for your usage data and that was through June 30th, 2022. Is that correct?

A. Yes.

Q. Do you believe that the usage data through June 30th would also be reflective of usage through either 12/31/22 or 1/31/23?

A. I have no information that would suggest it would be different.

MR. WOODSMALL: Thank you, your Honor.

JUDGE HATCHER: Thank you. Thank you. Mr. Lyons, you are dismissed from the virtual witness stand. I appreciate your appearance. Mr. Cox's testimony has already been entered. He's listed as a witness on the entire issue. We didn't take out just water.

MR. WOODSMALL: Thank you.

JUDGE HATCHER: Thank you. Let's move on to Staff. Does Staff have a Witness Roth? Or we're substituting, let me think, Gateley?

MR. VANDERGRIFF: Yes, your Honor. We call Curtis Gateley to the stand.

JUDGE HATCHER: Sorry. That was my part. Please raise your right hand.

CURTIS GATELEY

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

DIRECT EXAMINATION

JUDGE HATCHER: Thank you, sir. Please have a seat. Your witness.

BY MR. VANDERGRIFF:

Q. Good afternoon.

A. Good afternoon.

Q. Will you please state your name and spell your name for the record.

A. Curtis Gateley, C-u-r-t-i-s, G-a-t-e-l-e-y.

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

A. Public Service Commission Staff. I'm the manager of the Water, Sewer, and Steam Department.

Q. Are you the same person who caused to be prepared certain testimonies which have been marked as Staff exhibits which is direct testimony 111, rebuttal testimony 118, and 130 which is surrebuttal testimony.

A. I'm sorry. Yes. I did prepare those testimonies, but I'm also sponsoring additional testimony.

Q. All right. So you're sponsoring those testimonies. Do you have any changes or corrections to any of those testimonies?

A. I have been made aware that there is a correction to Keri Roth's testimony which has already been alluded to by -- in the opening to the case. There's a mathematical error in the previous rate design that she had prepared. It's -- it does not directly impact the -- the remaining issue of what average usage that's used in the rate design, but she, in calculating anticipated sales, she included in her math an assumed usage for unmetered customers, which would not have a metered usage; they're charged a flat rate. And the result of that caused errors then in calculating commodity rates. But that error is easily taken care of in any future rate design that might come out of this case.

MR. VANDERGRIFF: Your Honor, we can go about addressing this correction two ways. We can either amend it to Exhibit 133, our current errata sheet, or we can file a new one.

JUDGE HATCHER: Do you already have an errata sheet prepared?

MR. VANDERGRIFF: Exhibit 133.

JUDGE HATCHER: Oh. It's already in evidence.

MR. VANDERGRIFF: That one is and we can amend it to address these corrections.

JUDGE HATCHER: I'm going to ask the parties. My inclination is, and I know my preference has been for a written submission, but just listening to his answer, if this is the only one, I was kind of thinking of just accepting the on-the-record answer. However, I would assume that counsel may prefer something in writing, so I'm good with whatever the wishes of counsel are.

MR. WOODSMALL: Your Honor, I believe Mr. Gateley's clarification suffices for us. As he indicated, they're still using the 5000 gallon surrogate, so it does not affect their bottom line calculation. The clarification is adequate for us.

MR. CLIZER: My understanding being that

it does affect the issue which -- or affect the -- the clarification is directed towards an issue which is hopefully pending settlement, so I am okay with the clarification on the record as well.

JUDGE HATCHER: Okay. Then, Counsel, thank you. I do not need an addition to the errata sheet. I appreciate the offer.

MR. VANDERGRIFF: Thank you.

BY MR. VANDERGRIFF:

Q. Mr. Gateley, taking into account those corrections that you stated today, if I asked you the questions that were in the testimony, would you give the same answers today as in the testimony?

A. Yes.

MR. VANDERGRIFF: At this time I offer Staff Exhibits 111, 118, and 130 and I tender the witness for cross-examination.

JUDGE HATCHER: Thank you. Before I ask the other counsel for objections, I just want to double check and make sure. We are not asking for Exhibit 108 or 126 which is Witness Gateley's testimony; we're asking for Witness Roth's just --

MR. VANDERGRIFF: Right.

JUDGE HATCHER: Thank you, sir. Are there any objections? You heard the motion; we'll take them all in one, just for Witness Roth's testimonies, 111, 118, 130, are there any objections? Seeing none, it is so admitted.

(Staff Exhibits 111, 118, and 130 were admitted.)

JUDGE HATCHER: Witness has been tendered. Mr. Clizer.

MR. CLIZER: Oh, right. No questions. Thank you, your Honor.

JUDGE HATCHER: Confluence.

MR. WOODSMALL: No questions, your Honor. We waived.

JUDGE HATCHER: We waived.

MR. CLIZER: Didn't matter. It's all good.

JUDGE HATCHER: That's okay. I got Clizer. He had to answer on the record. Sorry. Bench questions. Sorry. Are there any commissioner questions? We'll pause for a minute.

COMMISSIONER HOLSMAN: Judge, I've got a question.

JUDGE HATCHER: Yes, Commissioner Holsman.

COMMISSIONER HOLSMAN: Thank you.

QUESTIONS

BY COMMISSIONER HOLSMAN:

Q. DNR publication 2852 says the average family's indoor water usage is about 50 gallons per day per person. Is that a fair estimate?

A. I don't know for certain what they relied on to -- to come up with that number. I -- I believe that it was probably a good number for them, but I -- I don't know that it lines up very well with what we've experienced across the state.

Q. And how many family members per household are you counting?

A. Our efforts are at -- what we've seen as far as per customer usage did not include an analysis of the numbers of persons in a house. We have lots of different situations. We have a great deal of customers where it's only two people, maybe retired couple; we have other situations where it's perhaps one person with an extensive irrigation system. So we're -- we're faced with many different settings.

Q. Okay. And how many gallons per day per household are you testifying to?

A. We have seen -- I have seen usage as low as 3,600 gallons per customer per month and usage greater than 6,000 per customer per month for a system. Obviously there's much greater variability within a system, but I did not try to do a breakdown on that math. I could. The efforts that we're making for rate design and for the examples that we send out for local public hearings is a per monthly average that we see.

Q. And that's somewhere between 3,600 and 6,000?

A. Generally speaking, yes.

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

JUDGE HATCHER: Thank you, Commissioner. Are there any other commissioner questions? Okay. The Bench does have just a couple.

QUESTIONS

BY JUDGE HATCHER:

Q. How did Staff come up with 5,000?

A. Really it was just our professional judgment based on what we have seen. We felt that 5,000 was a conservative estimate to use. The -- I said earlier, we have seen usage that generally is in the ballpark of between 4,000 and 5,000 most commonly. We have seen lower. I remember one, although I can't remember the name of the system, that I remember seeing actual average data that was 3,600 that looked pretty reliable. So really we were forced to make an estimate, and we chose what we thought was a good number that was conservative.

Q. So you looked at other systems in Missouri and decided on an average? I'm basically using "average" as a term of art, but you determined from your experience that 5,000 was an appropriate number?

A. Yes.

Q. Does that weighing of the systems differentiate between urban and rural?

A. In this effort, it -- it does not. The systems that Confluence has generally speaking are more rural. Generally speaking, we have had our highest usage in some of the more affluent areas in rural -- or sorry -- in urban settings where folks are irrigating yards. And in some cases they're required to by their homeowners association of course. But those are the folks who would have the highest usage and, you know, it's not unusual to see 10,000 gallons a month for some of those folk.

Q. In Witness Roth's prefiled testimony, she indicated that Staff was not able to use the Company's promoted average due to, quote, problems with the quality of Confluence's water sales data.

A. From our perspective, yes.

Q. Can you enlighten me on what those problems are?

A. I'll preface it by saying I fully acknowledge that Confluence is buying systems that are, well, I'll say the majority of the systems that they're purchasing are sometimes not in the best shape. But in looking at the data that the Company provided in response to data requests that our auditors had put forth in trying to establish revenues, there's -- there's several troubling things.

And I have an attachment that I put on my direct testimony which we haven't admitted yet, but it includes some of these examples where Terre Du Lac for example, they have in 2022 the data they reported to us, all but four months they sold more water than they produced. Well, that physically can't happen. You know, there's -- there's some problem with metering or some problem with -- with the data reporting.

Have other situations where system reports significant water loss or non-revenue water where they produced quite a bit more than they sold routinely. In other situations it -- there are wild swings between magically selling more water than what they produced versus then maybe the next month a water loss.

And from what -- from what I'm seeing with the data overall, this -- this doesn't look representative of what's actually going on. My -- my first instinct is that you're buying some systems that haven't had investment, but the most likely scenario is that some amount of the water loss is the meters aren't spinning accurately. Customer meters, they're -- they're not paying for all the water they're using. There isn't a good way to quantify that without having all those meters tested, but as has been presented in other evidence that -- or other testimony, it's not something you can figure out instantly.

I don't believe that 2,750 is an accurate representation of how much water folks are actually using. But we don't -- we don't have a good number for what it is. Might it likely be somewhere in between 2,750 and 5,000, it's certainly possible. But until meters are replaced, there's not a good way to know or well, test -- tested or replaced.

JUDGE HATCHER: Thank you. That'll take us to recross-examination. Mr. Clizer.

MR. CLIZER: No questions, thank you.

JUDGE HATCHER: Confluence.

MR. WOODSMALL: Thank you, your Honor.

RECROSS-EXAMINATION

BY MR. WOODSMALL:

Q. Just working -- well, we'll work in the same order. You were asked some questions by Commissioner Holsman representing that DNR publication 2852. Do you recall that question?

A. I recall the question.

Q. And you are not familiar with that document, are you?

A. It's certainly possible that I have read it, but I don't have an immediate recollection of it.

Q. Okay. But it talks about 50 gallons per day per customer. Do you recall him quoting that?

A. I do.

Q. And do you know whether that 50 gallons is measured at the customer meter or at the discharge of the well?

A. I do not know.

Q. Okay. And so you don't know if it accounts for lost and unaccounted for water, do you?

A. I do not.

Q. So you don't know whether it's applicable to this issue or not?

A. Correct.
Q. Okay. Do you know, and I believe you started down this path, but would you expect there to be a reduced penetration level of swimming pools and irrigation at Confluence water systems than Missouri-American systems?
A. Not directly. But I would be willing to say is that I -- in the systems that we're talking about that Confluence owns right now, I would not expect a proliferation of pools and irrigation.
Q. And --
A. Missouri-American's settings are widely variable.
Q. And when you came up with the surrogate level of 5,000 gallons per month, did you factor in Missouri-American into that determination?
A. It's part of the experience I relied upon, yes.
Q. Okay.
A. Or we relied upon.
Q. Can you tell me what other systems you relied upon?
A. I do not have a list. It is based on my recollection and other Staff's recollection of the last several that we had examined. And based upon

our experience when we did have data, there are situations where we're having to make these kinds of estimates sometimes where we don't have data yet, such as local public hearing notices and such. But I did not try to do a detailed analysis of various systems.

Q. Okay. So let's inquire into that a little further. You said you relied upon Missouri-American and some other systems. Do you recall that?

A. Yes.

Q. So your knowledge would come about primarily through a Missouri-American rate case or a small water company rate case. Is that correct?

A. It's fair to say primarily, yes.

Q. Okay. In the last five years, what small water rate cases have you done?

A. Some of the previous legacy companies for Confluence; Missouri-American twice; I believe Liberty once. Some of the company names blend together where I'm not so sure -- certain as a manager if it was water and sewer. But Argyle Estates, SK&M, and that one might have been twice in the last five years. I believe Raytown perhaps once in the last five years. There's -- there's a handful. I'm certain that some of my staff are hollering and wish I could remember all of them.

Q. Final line of questioning. You talked about you're certain that there are customers not paying for all their usage. You recall that?

A. If I said that, that's not what I meant. What I recall is that it's my belief that it's likely, based on the situation and some of the data, that some of the meters are probably not reading accurately.

Q. Okay.

A. That some customers are receiving more water probably than what they're paying for.

Q. And would you agree that generally as meters age, they read low?

A. Yes.

Q. Okay. And if the meters that were used for the data provided in this case are the same meters that will be used to do billings in the near future, if they both read low, where's the concern?

A. My concern is that the meters need to be replaced. The Company has agreed to -- well, back up. The Company has agreed to test or replace meters. If we assume that these meters have degrading quality and the regulations anticipate that they would have trouble beyond ten years, and many of these systems are older than ten years, that as the Company replaces those meters so that it is collecting accurate bills, if too low of a number is used for the rate design development, as the Company goes through replaces those meters, the potential exists for over-collection.

Q. But that replacement is going to take place over a long extended period of time. Is that correct?

A. I am optimistic that the Company will be pretty aggressive with their meter replacement process.

Q. They've only agreed to test 10 percent a year, is that correct, and you've agreed to that?

A. Test or replace, yes.

MR. WOODSMALL: No further questions.

JUDGE HATCHER: Okay. We'll move to redirect.

REDIRECT EXAMINATION

BY MR. VANDERGRIFF:

Q. Good afternoon, Mr. Gateley. The Bench asked you about problematic data. Why didn't you choose to go with the Company's numbers?

A. My concern is that with an average number that low, if we use that in the rate design, in my opinion it was likely that the Company would collect more than the amount that eventually they would be authorized by the -- by this proceeding to collect. If you use too low of a number in assumed sales or in this case, if we use the number presented by the Company, then the result of the rate design would be a situation where if they actually sold more than that, then they would over-collect.

Q. And you were also asked questions about meters reading low. How is that relevant to our estimate for 5,000 gallons versus the Company's estimate?

A. Staff used a conservative estimate of 5,000, but with a number that was so low as presented by the Company, it seemed to me likely that some of these older meters were not recording all the flow going through them. If we go with the assumption that for some of these systems that Confluence had purchased that had had no investment in a -- in a treatment system or -- sometimes or in the distribution system, that they probably also hadn't had a lot of investment in metering. And it's been my experience that a lot of these systems that have really old meters need that work, need to have them replaced. And we said -- made a judgment call. If we use the Company's numbers, my fear is they over-earn.

Q. So there was questions about the AMI meters and testing them, 10 percent a year. That was a minimum. Could they replace more than the 10 percent? Could they test more than that 10 percent a year?

A. Yeah. This isn't specifically related to the AMIs, but yes, for customer meters, there's nothing preventing the Company from having more rapid testing or more rapid deployment of replacement of meters.

Q. With that said, has any customers had their meters replaced?

A. I'm certain some have. That would be a normal, typical situation. For example, if the Company had bought a system that had substandard meters pits that weren't insulated well or weren't deep enough and those meters froze, then Confluence would have replaced meters and fixed that problem. So I do not have a -- a listing of how many meters have been replaced amongst all their systems in the last ten years.

Q. Since some meters have already been

replaced, is it --

MR. WOODSMALL: Your Honor, I believe that mischaracterizes Mr. Gateley's testimony. He wasn't aware of any.

JUDGE HATCHER: Yeah. I'm -- I'm afraid I agree with Mr. Woodsmall. He phrased it pretty particularly that he assumed; I don't think he said assume, but he -- he believed that there probably was, but I didn't hear a definitive.

BY MR. VANDERGRIFF:

Q. Are you assuming that meters have been replaced, or are you relatively sure that any meters have been replaced?

A. I am assuming that some meters likely have been replaced because it would have been unusual for a company that is generally pretty responsive to situations, problems, it would be unusual for them not to have encountered a situation where they had to replace some meters.

Q. So let's assume that some of those meters have been replaced. If meters had been replaced, then would new -- would those new owners potentially subsidize the cost of the older people who are going to get new meters later? I can rephrase that.

A. Yeah. I'm not understanding the question.

Q. All right. Let's assume that some meters were replaced. Would lower usage cost customers to pay or subsidize the customers with older meters?

A. There can be a situation where if some meters have been replaced and those readings are accurate, that those customers could be paying more than -- to cover the amount of money that a customer with a poorly performing meter isn't paying. If the Company's under-collecting from some customers, they could, in theory, as a result of this rate case proceeding, try to recover that shortcoming. And if folks have an accurate meter, yes, they could be, although I don't use that word "subsidizing," they could be paying more and folks with an older meter could be paying less.

MR. VANDERGRIFF: No further questions.

JUDGE HATCHER: Thank you, Mr. Gateley, you are excused. I believe we're moving to Office of Public Counsel witnesses.

MR. CLIZER: We don't have a witness for this issue.

JUDGE HATCHER: Because I'm looking at the list for Issue Five, rate design. Excellent. That is all the witnesses that we have on water usage, water flow rate. I did not expect us to be ending this fast. This kind of caught me off guard obviously.

Okay. Let's talk through this. What time do we want to start tomorrow?

MR. WOODSMALL: Your Honor, I believe there is some possibility that we can finish tomorrow, so it -- given that, it may be in everybody's best interest to start at 9:00 and see if it's possible.

JUDGE HATCHER: Any objections? Sold. Nine o'clock.

And on the schedule for everyone's listening convenience, the issues I have are only C and D of the operation and maintenance issue.

MR. CLIZER: Your Honor.

JUDGE HATCHER: Yes.

MR. CLIZER: I'm sorry. You were reading that out, and I apologize.

JUDGE HATCHER: No, no, you're good.

MR. CLIZER: Want to let you know that OPC has chosen to withdraw Issue C and will be leaving Angela Schaben off the list of witnesses as well. We will be proceeding on just Issue D with just Dr. Marke as our witness.

JUDGE HATCHER: Thank you for the clarification. And the other two issues will be 21, corporate allocations; 25, capitalization versus expense.

MR. WOODSMALL: And while we are proceeding down this road, we also be dropping the corporate allocation issue.

JUDGE HATCHER: I don't hear any objections. Sold.

So tomorrow we are down to Issue D, operations and maintenance. Since I'm reading stuff out loud, let me grab that real quick.

Issue D is should the Commission order a disallowance related to Confluence's contract-based business model, and if so, how much.

That issue and capital -- capitalization versus expense.

MR. WOODSMALL: Your Honor, and to further clarify, I have no doubt Mr. Thompson was going to raise this, that at least the parties I think were going to waive cross on Mr. Harris and Mr. Williams.

MR. THOMPSON: Right.

MR. WOODSMALL: Cleaning up the case.

JUDGE HATCHER: So noted. Any other

announcements before we adjourn for the day?
Excellent. We're off the record and adjourned.
(Whereupon, the hearing was adjourned until August 16, 2023 at 3:09 p.m.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)
COUNTY OF COLE)

I, Shelley L. Bartels, a Certified Court Reporter, CCR No. 679, do hereby certify that I was authorized to and did stenographically report the transcript of proceedings; and that the foregoing transcript, pages 1 through 188, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 20th day of August, 2023.

Shelley L Bartels

Shelley L. Bartels, CCR 679

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