

THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

October 6, 2015

Jefferson City, Missouri

Volume 2

In the Matter of Missouri -)
American Water Company's)
Request for Authority to) File Nos. WR-2015-0301
Implement a General Rate) and SR-2015-0302
Increase for Water and)
Sewer Service Provided in)
Missouri Service Areas)

KENNARD L. JONES, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
Angie D. Threlkeld, CCR
TIGER COURT REPORTING, LLC

A P P E A R A N C E S

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1 JUDGE JONES: This is Case Number
2 WR-2015-0301, Missouri -American Water Company's Request
3 for a General Rate Increase, and this is our first
4 discovery conference. Staff has filed a notice. And
5 Missouri -American, I won't say objects, but takes issue
6 with Staff's request.

7 I'm not sure how to get this started, but I
8 do want to ask this: This seems like a pretty general
9 issue that's come up before in other cases, hasn't it?
10 Or is that just my memory failing me, as far as Staff
11 wanting to have -- get information about a parent company
12 because the company that's regulated --

13 MR. THOMPSON: It comes up frequently.

14 JUDGE JONES: Okay.

15 MR. COOPER: Certainly that part, Your Honor,
16 has come up before, yes.

17 JUDGE JONES: Okay. Oh, let me back up and
18 take entries, starting with Laclede -- I mean,
19 Missouri -American Water Company.

20 MR. COOPER: Dean Cooper from the law firm of
21 Brydon, Swearingen & England, PC, appearing for
22 Missouri -American Water. And then also on the telephone
23 is Timothy Luft of Missouri -American Water Company.

24 JUDGE JONES: And the Office of the Public
25 Counsel.

1 MS. BAKER: Thank you. Christina Baker,
2 appearing on behalf the Office of the Public Counsel and
3 the customers.

4 JUDGE JONES: And the Staff of the
5 Commission?

6 MR. THOMPSON: Kevin Thompson for the Staff
7 of the Missouri Public Service Commission, Post Office
8 Box 360, Jefferson City, Missouri 65102.

9 JUDGE JONES: And any other parties present?
10 Okay. On my left first.

11 MR. WENZEL: Keith Wenzel with the law firm
12 of Spencer Fane on behalf of the City of Riverside.

13 JUDGE JONES: And you, sir.

14 MR. DOWNEY: Edward Downey, Brian Cave, on
15 behalf of the Missouri Industrial Energy Consumers.

16 JUDGE JONES: And I'm -- at the outset I'm
17 going to ask do you all have a specific interest in this
18 discovery conference or are you here -- are you
19 participating or are you listening?

20 MR. DOWNEY: For the MIEC, both.

21 JUDGE JONES: Okay.

22 MR. WENZEL: And for the City of Riverside,
23 both.

24 JUDGE JONES: Okay. All right. So -- and
25 you --

1 MR. ANTAL: Judge?

2 JUDGE JONES: Yes.

3 MR. ANTAL: Sorry to interrupt, but I'm here
4 representing the Division of Energy.

5 JUDGE JONES: Okay. Thank you. And did you
6 already give the court reporter your entry?

7 MR. ANTAL: Yes. Alex Antal.

8 JUDGE JONES: Okay. Sorry, Alex.

9 MR. ANTAL: It's quite all right.

10 JUDGE JONES: I'm used to seeing you with
11 Staff.

12 So, like I said, there is an issue that's
13 come up -- comes up frequently, and it's still not
14 resolved. That's what I don't understand. I mean, how
15 has the Commission treated it in the past, and why do you
16 think they're going to do anything different? That's to
17 anybody who has the answer to that question.

18 MR. COOPER: Yeah, I guess I would agree with
19 your earlier statement, Your Honor, that I'm not sure
20 that it's been -- there's real clear ultimate guidance on
21 the question, because you're right, it comes up. I think
22 it ends up being worked out many times. It -- I think it
23 differs from case to case, to a certain extent. I don't
24 know that there's a firm answer in terms of that.

25 I guess what I would call the -- kind of the

1 possession, custody, or control issue, whether --
2 whether Missouri -American, as the operating company and
3 the public utility in the state of Missouri, is deemed to
4 have possession, custody, and control of all documents
5 that its parent or other affiliates -- not even its
6 parent, but other affiliates may -- may possess. So...

7 JUDGE JONES: Okay.

8 MR. COOPER: And then, beyond that, I
9 think -- even if you get past that, I think in certain
10 instances there are relevance questions that are valid
11 questions to ask in that context as well, whereas for
12 Missouri -American, all its books and records, at least as
13 far as Staff and OPC, are deemed to be, you know, open
14 and subject to review by those parties.

15 I think when you step beyond
16 Missouri -American, that's not the case. And so even if
17 you say that Missouri -American has possession, custody,
18 and control of those documents, there remains the normal
19 question of, well, is it really relevant to the
20 litigation where it's being requested.

21 MR. THOMPSON: Well, we play this game with a
22 lot of the companies, Judge. And it's kind of, you know,
23 who's got the documents, where are the documents hiding
24 today. I think the reality is is that the operating
25 company can provide whatever's necessary and desirable in

1 order to protect and advance its interests, and we've
2 seen that time and time again. So I don't think
3 Missouri-American would have any particular difficulty
4 acquiring the information from its parent or from its
5 subsid-- its affiliates if it, in fact, wanted to do so.
6 But that's Staff's position.

7 MR. COOPER: I think the question is
8 different than that, though. I mean, the question is not
9 whether, even assuming somebody could -- can provide it;
10 the question is must they provide it when you start to
11 talk about a motion to compel. And so, again, it's a
12 different question.

13 JUDGE JONES: But, Mr. Cooper, you did frame
14 it that way initially by saying that the issue had
15 something to do with the ability to produce information
16 in possession and control.

17 MR. COOPER: Right. I mean, for example, I
18 mean, Staff could ask us for information that, you know,
19 that Schnucks has, and we might be able to walk down to
20 Schnucks and provide it. So we could provide it, but I
21 think the question in the discovery context is whether
22 must you provide that information that's not -- not your
23 own information.

24 JUDGE JONES: Well, but when you talk about
25 possession and control, I take that, without the benefit

1 of any research, to mean if you possess and control it,
2 meaning if you have the information, then the issue
3 becomes whether you must provide it. I mean, am I off
4 the mark with that?

5 MR. COOPER: Well, that's the way we would
6 view it as well.

7 JUDGE JONES: Oh, okay.

8 MR. COOPER: And so information maintained by
9 the parent but not be within Missouri American's
10 possession, custody, or control, for example.

11 JUDGE JONES: Well --

12 MR. COOPER: Or information maintained by
13 Ohio American or Indiana American.

14 JUDGE JONES: I take that particular issue to
15 mean are you able -- if you're willing to provide it, are
16 you able to provide it? Schnucks may object to you
17 walking down the street and get information. So you may
18 not even be able to provide that, regardless of whether
19 the Commission rules. If the Commission says provide all
20 the information Staff requested, if you're unable to
21 provide it, then you can't comply with that order. So I
22 just want to move past that issue. Either you have it or
23 you don't.

24 If you -- if you -- if you're able to provide
25 it, then we move on to the deeper question. But if

1 you're unable to provide it, it doesn't matter what the
2 Commission orders, you can't give it to them; you can't
3 give it to Staff, regardless of what the Commission says.
4 And, I mean, maybe I'm speaking out of turn. But I
5 will -- this will be taken up with the Commission,
6 because it's such a broad issue, and I've got a feeling
7 that it's -- you want to hear what they have to say about
8 this. At least I do.

9 Ms. Baker, I feel like you want to chime in.

10 MS. BAKER: I would certainly agree with
11 Mr. Thompson that, you know, these are -- these are
12 decisions that are being made at the parent American
13 Water Level, they're being passed down to the customers
14 of Missouri-American. Information does flow back and
15 forth between Missouri-American and American Water. And
16 so I see no reason why they couldn't ask for certain
17 information from -- from the parent company.

18 For example, one of the ones that we asked
19 for were board meetings of American Water. I have no --
20 no reason why that would not be able to be collected by
21 Missouri-American. It's certainly relevant to it because
22 decisions are made for Missouri in those board meetings.
23 So that's -- that's how I feel about that.

24 JUDGE JONES: Your request isn't part --

25 MS. BAKER: It is not. It is not. But I do

1 have similar -- similar objections from what has come to
2 Staff. And so some of them just came in yesterday as
3 well.

4 JUDGE JONES: Oh, so this could be an issue
5 at a subsequent --

6 MS. BAKER: Yes, yes.

7 JUDGE JONES: -- discovery conference?

8 MS. BAKER: Yes.

9 JUDGE JONES: Okay. Does -- at this point
10 does anyone else -- any other party want to chime in on
11 this discussion?

12 Okay. Now, let me ask Staff why is the
13 information relevant? Why is it relevant?

14 MR. COOPER: Your Honor, and I don't --

15 MR. THOMPSON: I think he asked Staff.

16 MR. COOPER: I know.

17 JUDGE JONES: Hold on a second.

18 MR. COOPER: I'm not going to try to answer
19 the Judge's specific question. But --

20 JUDGE JONES: Go ahead, Mr. Cooper.

21 MR. COOPER: I wonder if it wouldn't be
22 valuable to first kind of identify what DRs are at issue,
23 because based upon earlier discussion, I don't think that
24 all five of the DRs that are identified in Staff's
25 documents remain at issue.

1 JUDGE JONES: That's fair. That's fair.
2 Let's start with DR 187. That looks to be the first one.

3 MR. THOMPSON: 187 and 189 are still at
4 issue.

5 JUDGE JONES: So 191 is not?

6 MR. THOMPSON: It's my under -- let me
7 confer.

8 Judge, we think that 191 is no longer at
9 issue, and I have been told that 196 and 197 are no
10 longer at issue. So for Staff it's only 187 and 189.

11 JUDGE JONES: I'll just let the record
12 reflect that the parties are talking amongst themselves.

13 MR. THOMPSON: I think 187 is also resolved.

14 JUDGE JONES: So we've --

15 MR. THOMPSON: Just 189.

16 JUDGE JONES: Well, it sounds -- I mean, the
17 underlying legal arguments are the same for all of them.

18 MR. THOMPSON: Right.

19 JUDGE JONES: So I don't understand why 189
20 isn't resolved. In my golf commentator voice, I'll say
21 that it looks like 189 may be resolved also.

22 MR. COOPER: Well, I think --

23 MR. THOMPSON: It's up to you. You've got
24 the info. If you're going to cough up it, it's resolved.

25 MR. COOPER: I don't have the info. But on

1 189 the issue that remains there has to do with the
2 Equity Research report side. And the Company has
3 provided those for 2015. The question asked for those
4 reports all the way back to 2010.

5 So beyond sort of the possession, custody,
6 and control issue we talked about before, I think there's
7 both an overly-broad objection as to going back to 2010
8 and really a relevance objection as to what relevance
9 those Equity Research reports have all the way back to
10 2010.

11 What the Company has provided is the most
12 recent, the 2015 information. It's fairly voluminous
13 just for 2015. It's -- you know, it's a 200-page set
14 of -- set of documents. And they're not maintained by
15 the Company. So, you know --

16 JUDGE JONES: I can hear you.

17 MR. COOPER: -- trying to track down
18 everything through 2010, providing everything through
19 2010 when certainly we believe it has no relevance to
20 this case --

21 JUDGE JONES: Okay.

22 MR. COOPER: -- is the argument, really, on
23 189.

24 JUDGE JONES: Why doesn't the same argument
25 apply to 191? It talks about information back to 2010

1 also.

2 MR. COOPER: 191 was a little different
3 because there was only a report. The most recent report
4 was in the 2010, 2011 time frame on that one.

5 Mr. Thompson had kind of proposed something
6 to me, and I probably need to go offline to talk to my
7 folks before I can respond to it.

8 MR. THOMPSON: Okay. We're willing to trim
9 down our request a little bit.

10 JUDGE JONES: To what?

11 MR. THOMPSON: To 2012.

12 JUDGE JONES: Does someone on the phone want
13 to say something? I thought I heard someone begin to
14 speak up.

15 MR. RUNGREN: Sure. This is Scott Rungren.
16 Last name spelled R-U-N-G-R-E-N. I'm in the rates
17 department in St. Louis. I'm not exactly sure about the
18 availability of reports prior to 2015. I spoke to our
19 treasury yesterday about this, and it's not as if we have
20 them on a file server somewhere in a cabinet or
21 something. They're just not sure to what extent we can
22 retrieve data prior to 2015.

23 And I do know that there's -- that ten
24 analysts that follow the company, the parent company. So
25 it's a rather significant number of reports that are out

1 there somewhere. I just don't know the extent to which
2 we can gather them.

3 MR. THOMPSON: Well, if they don't have
4 them -- I mean, that goes back to do they have them.

5 JUDGE JONES: Right.

6 MR. THOMPSON: If you don't have them, then
7 your answer is we don't have them. If you do have them
8 or can get them, if you understand what I mean,
9 relatively easily, then the question is are you willing
10 to provide them. Right? So if you're willing to provide
11 what you have from 2012 on, we'll call it a day.

12 MR. COOPER: Scott, Tim, did you all hear
13 that?

14 MR. RUNGREN: Yeah, we did.

15 MR. LUFT: Yes.

16 MR. RUNGREN: My impression is that this
17 requires a significant amount of work on the part of the
18 treasury to get this. I'm speaking for them, so I'm not
19 exactly sure how much work is involved. But just from my
20 impression from talking to them, it's not an easy task.
21 And I think in the last case we were asked to go back one
22 year, and we did that. I don't know that we even
23 maintain these back that far. Can we look for them?
24 Yes. I just don't know what's out there, and it could be
25 a large amount of work involved.

1 JUDGE JONES: It sounds like you're trying to
2 raise an issue of time?

3 MR. RUNGREN: Yeah. And I'm somewhat on
4 shaky grounds. I don't know exactly what's involved. I
5 think someone has to go and search and try and find them.

6 MR. COOPER: Yeah, the time issue that Scott
7 was pointing out was -- Mr. Rungren was pointing out
8 was -- in the last case I think we went back a year for
9 these. And so that's --

10 JUDGE JONES: Okay.

11 MR. COOPER: -- kind of a timing issue at
12 this point.

13 JUDGE JONES: When was the last case?

14 MR. COOPER: It was 2010, 2011, yeah.

15 MR. RUNGREN: Yeah. The data request in the
16 last case was submitted in August of 2011, and we were
17 asked to go back to April of 2010.

18 JUDGE JONES: And I take it then that's why
19 Staff's request goes back to whatever happened since the
20 last rate case?

21 MR. THOMPSON: I think that's correct.

22 JUDGE JONES: Okay. Well, I mean, is this
23 something -- it sounds like you all are on the same page;
24 it's just a matter of whether you can -- how long it's
25 going to take to get the information, how soon Staff

1 needs it. Okay. Well, nobody's smiling, though. I
2 don't understand that.

3 MR. COOPER: I think there's some unknowns.
4 I think it's going to take some --

5 MR. THOMPSON: I'm smiling, Judge.

6 MR. COOPER: It'll take -- it'll need to play
7 itself out, I think, Your Honor. I mean, I think that's
8 where we are. I mean, given -- given your instructions
9 or given your statement and Staff's statement, we need to
10 take a look and see what documents we can relatively
11 easily put our hands on.

12 MR. THOMPSON: Right. And this wasn't meant
13 to be obstreperously burdensome.

14 JUDGE JONES: Can you not use words like
15 that, please.

16 Okay. Does any other party have anything
17 that they're concerned about with regard to this dispute?

18 All right. I mean, do you all feel the
19 dispute is resolved? Because we're not going to be able
20 to come back and start rehashing things.

21 MR. COOPER: Well, I don't think you have to
22 waive -- well...

23 MR. THOMPSON: I feel like it's resolved for
24 now. If you're willing to look to see what you can find
25 relatively easily, as you said, and then you're willing

1 to provide whatever that might be, then I think we're
2 willing to say that we will have to be content with that.

3 JUDGE JONES: Okay.

4 MR. COOPER: Mr. Luft, Mr. Rungren, do you
5 have anything that you need to add?

6 MR. RUNGREN: No, I think we were just
7 talking that we're going to have to see how many hours
8 it's going take to go back those prior years and what --
9 we're going to hear from treasury what's involved, and we
10 will get back to everyone.

11 JUDGE JONES: Can I make a suggestion? Going
12 forward, like can you all just have a file that says
13 Commission Rate Case File and just put stuff in there
14 that they always ask for; then you can just pull the file
15 out and give it to them?

16 MR. COOPER: They do at Missouri-American.
17 They can't control the parent.

18 JUDGE JONES: Oh, I see. Well, just shoot is
19 up the ladder and see what happens.

20 All right. Well, with that, then, let's go
21 off the record.

22 Thank you, guys.

23 (Off the record.)
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I, Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Angie D. Threlkeld

Angie D. Threlkeld, CCR



A	<p>Associate 15:1 assuming 20:9 attorney 14:7,18 14:22 31:11 August 28:16 Authority 13:11 availability 26:18 Avenue 14:8</p>	C	<p>21:19,19 22:2 22:3,5 30:13 companies 19:22 company 14:10 14:13 16:11,12 16:19,23 19:2 19:25 22:17 25:2,11,15 26:24,24 Company's 13:10 16:2 compel 20:11 comply 21:21 concerned 29:17 confer 24:7 conference 13:5 16:4 17:18 23:7 Consumers 14:25 17:15 content 30:2 context 19:11 20:21 control 19:1,4 19:18 20:16,25 21:1,10 25:6 30:17 Cooper 14:7 16:15,20,20 18:18 19:8 20:7,13,17 21:5,8,12 23:14,16,18,20 23:21 24:22,25 25:17,22 26:2 27:12 28:6,11 28:14 29:3,6 29:21 30:4,16 Corporate 14:11 correct 28:21 cough 24:24 counsel 14:2,11 14:14,17 15:1</p>	<p>16:25 17:2 31:8,11 court 13:19 18:6 31:3 Craig 14:11 custody 19:1,4 19:17 21:10 25:5 customers 17:3 22:13</p>
	B		D	
<p>ability 20:15 31:6 able 20:19 21:15 21:16,18,24 22:20 29:19 acquiring 20:4 action 31:9,13 add 30:5 advance 20:1 affiliates 19:5,6 20:5 agree 18:18 22:10 ahead 23:20 Alex 18:7,8 ALEXANDER 15:1 American 13:10 21:13,13 22:12 22:15,19 American's 21:9 amount 27:17 27:25 analysts 26:24 Angie 13:18 31:3,19 answer 18:17,24 23:18 27:7 Antal 15:1 18:1 18:3,7,7,9 anybody 18:17 appearing 16:21 17:2 apply 25:25 April 28:17 Areas 13:13 argument 25:22 25:24 arguments 24:17 asked 22:18 23:15 25:3 27:21 28:17</p>	<p>back 16:17 22:14 25:4,7,9 25:25 27:4,21 27:23 28:8,17 28:19 29:20 30:8,10 Baker 14:14 17:1,1 22:9,10 22:25 23:6,8 based 23:23 behalf 17:2,12 17:15 believe 25:19 benefit 20:25 best 31:6 beyond 19:8,15 25:5 bit 26:9 board 22:19,22 Bolivar 14:23 books 19:12 Box 14:4,8,16 17:8 Brian 17:14 Britt 14:19 broad 22:6 Browne 14:19 Bryan 14:22 Brydon 14:7 16:21 Building 14:3,14 burdensome 29:13</p>	<p>C 14:1 cabinet 26:20 call 18:25 27:11 Capitol 14:8 case 16:1 18:23 18:23 19:16 25:20 27:21 28:8,13,16,20 30:13 cases 16:9 Cave 14:22 17:14 CCR 13:18 31:4 31:19 certain 18:23 19:9 22:16 certainly 16:15 22:10,21 25:19 CERTIFICATE 31:1 Certified 31:3 certify 31:5 Chief 14:2 chime 22:9 23:10 Christina 14:14 17:1 City 13:7 14:5,9 14:16,20,21,24 15:2 17:8,12 17:22 clear 18:20 collected 22:20 come 16:9,16 18:13 23:1 29:20 comes 16:13 18:13,21 commentator 24:20 Commission 13:1 14:6 17:5 17:7 18:15</p>	<p>D 13:18 31:3,19 data 26:22 28:15 day 27:11 Dean 14:7 16:20 decisions 22:12 22:22 deemed 19:3,13 deeper 21:25 department 26:17 Deputy 14:14 desirable 19:25 different 18:16 20:8,12 26:2 differs 18:23 difficulty 20:3 direction 31:7 discovery 13:5 16:4 17:18 20:21 23:7 discussion 23:11 23:23 dispute 29:17,19 Division 15:3 18:4 documents 19:4 19:18,23,23 23:25 25:14 29:10 Downey 14:22 17:14,14,20 DR 24:2</p>	

DRs 23:22,24	feeling 22:6	guess 18:18,25	interest 17:17	23:4,7,9,17,20
<hr/> E <hr/>	file 13:11 26:20	guidance 18:20	interested 31:12	24:1,5,8,11,14
E 14:1,1	30:12,13,14	guys 30:22	interests 20:1	24:16,19 25:16
earlier 18:19	filed 16:4	<hr/> H <hr/>	interrupt 18:3	25:21,24 26:10
23:23	financially 31:12	hands 29:11	involved 27:19	26:12 27:5
easily 27:9 29:11	find 28:5 29:24	happened 28:19	27:25 28:4	28:1,10,13,18
29:25	firm 16:20 17:11	happens 30:19	30:9	28:22 29:5,14
East 14:8,19	18:24	hear 22:7 25:16	issue 16:5,9	30:3,11,18
easy 27:20	first 16:3 17:10	27:12 30:9	18:12 19:1	Judge's 23:19
Edward 14:22	23:22 24:2	heard 26:13	20:14 21:2,14	<hr/> K <hr/>
17:14	five 23:24	hearing 31:5,6,9	21:22 22:6	Keith 14:18
Either 21:22	flow 22:14	hiding 19:23	23:4,22,25	17:11
employed 31:8	folks 26:7	High 14:19 15:1	24:4,9,10 25:1	KENNARD
31:11	follow 26:24	Hold 23:17	25:6 28:2,6,11	13:14
employee 31:11	foregoing 31:4,5	Honor 16:15	it'll 29:6,6	Kevin 14:2 17:6
ends 18:22	forth 22:15	18:19 23:14	<hr/> J <hr/>	kind 18:25
Energy 14:25	forward 30:12	29:7	Jefferson 13:7	19:22 23:22
15:3 17:15	frame 20:13	hours 30:7	14:5,9,16,20	26:5 28:11
18:4	26:4	<hr/> I <hr/>	14:24 15:2	know 18:24
England 14:7	frequently 16:13	identified 23:24	17:8	19:13,22 20:18
16:21	18:13	identify 23:22	JONES 13:14	22:11 23:16
entries 16:18	further 31:10	Implement	16:1,14,17,24	25:13,15 26:23
entry 18:6	<hr/> G <hr/>	13:11	17:4,9,13,16	27:1,22,24
Equity 25:2,9	game 19:21	impression	17:21,24 18:2	28:4
exactly 26:17	gather 27:2	27:16,20	18:5,8,10 19:7	<hr/> L <hr/>
27:19 28:4	general 13:11	Increase 13:12	20:13,24 21:7	L 13:14 14:7
example 20:17	15:1 16:3,8	16:3	21:11,14 22:24	Laclede 16:18
21:10 22:18	give 18:6 22:2,3	Indiana 21:13	23:4,7,9,17,20	ladder 30:19
extent 18:23	30:15	Industrial 14:25	24:1,5,11,14	large 27:25
26:21 27:1	given 29:8,8,9	17:15	24:16,19 25:16	law 13:15 14:7
<hr/> F <hr/>	go 23:20 26:6	info 24:24,25	25:21,24 26:10	14:18,22 16:20
F 14:22	27:21 28:5,17	information	26:12 27:5	17:11
fact 20:5	30:8,20	16:11 20:4,15	28:1,10,13,18	left 17:10
failing 16:10	goes 27:4 28:19	20:18,22,23	28:22 29:14	legal 24:17
fair 24:1,1	going 17:17	21:2,8,12,17	30:3,11,18	let's 24:2 30:20
fairly 25:12	18:16 23:18	21:20 22:14,17	Judge 13:15	level 22:13
Fane 14:19	24:24 25:7	23:13 25:12,25	16:1,14,17,24	listening 17:19
17:12	28:25 29:4,19	28:25	17:4,9,13,16	litigation 19:20
far 16:10 19:13	30:7,8,9,11	initially 20:14	17:21,24 18:1	little 26:2,9
27:23	golf 24:20	instances 19:10	18:2,5,8,10	LLC 13:19
feel 22:9,23	Governor 14:3	instructions	19:7,22 20:13	LLP 14:19,22
29:18,23	14:14	29:8	20:24 21:7,11	long 28:24
	grounds 28:4		21:14 22:24	

<p>longer 24:8,10 look 27:23 29:10 29:24 looks 24:2,21 lot 19:22 Louis 14:12 26:17 Luft 14:11 16:23 27:15 30:4</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>Madison 14:3 14:15 maintain 27:23 maintained 21:8 21:12 25:14 mark 21:4 matter 13:10 22:1 28:24 mean 16:18 18:14 20:8,17 20:18 21:1,3 21:15 22:4 24:16 27:4,8 28:22 29:7,8 29:18 meaning 21:2 meant 29:12 meetings 22:19 22:22 memory 16:10 MIEC 17:20 Missouri 13:2,7 13:13 14:5,6,9 14:12,16,20,21 14:24,25 15:2 15:3 17:7,8,15 19:3 21:9 22:22 Missouri- 13:10 Missouri-Ame... 14:10,13 16:2 16:5,19,22,23 19:2,12,16,17</p>	<p>20:3 22:14,15 22:21 30:16 motion 20:11 move 21:22,25</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 14:1 name 26:16 necessary 19:25 need 26:6 29:6,9 30:5 needs 29:1 neither 31:8 nobody's 29:1 normal 19:18 Nos 13:11 notice 16:4 number 16:1 26:25</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 21:16 objection 25:7,8 objections 23:1 objects 16:5 obstreperously 29:13 October 13:6 Office 14:3,14 14:17 16:24 17:2,7 officer 31:4 offline 26:6 Oh 16:17 21:7 23:4 30:18 Ohio 21:13 okay 16:14,17 17:10,21,24 18:5,8 19:7 21:7 23:9,12 25:21 26:8 28:10,22 29:1 29:16 30:3 ones 22:18</p>	<p>OPC 19:13 open 19:13 operating 19:2 19:24 order 20:1 21:21 orders 22:2 outcome 31:13 outset 17:16 overly-broad 25:7</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 14:1,1 P.C 14:7 page 28:23 parent 16:11 19:5,6 20:4 21:9 22:12,17 26:24 30:17 part 16:15 22:24 27:17 participating 17:19 particular 20:3 21:14 parties 17:9 19:14 24:12 31:9,12 party 23:10 29:16 passed 22:13 PC 16:21 phone 26:12 play 19:21 29:6 please 29:15 PO 14:4,8,16 point 23:9 28:12 pointing 28:7,7 position 20:6 possess 19:6 21:1 possession 19:1 19:4,17 20:16 20:25 21:10</p>	<p>25:5 Post 17:7 present 17:9 Presiding 13:14 pretty 16:8 prior 26:18,22 30:8 probably 26:6 PROCEEDIN... 13:4 produce 20:15 proposed 26:5 protect 20:1 provide 19:25 20:9,10,20,20 20:22 21:3,15 21:16,18,19,21 21:24 22:1 27:10,10 30:1 provided 13:12 25:3,11 providing 25:18 public 13:1 14:6 14:14,17 16:24 17:2,7 19:3 pull 30:14 put 29:11 30:13</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 18:17 18:21 19:19 20:7,8,10,12 20:21 21:25 23:19 25:3 27:9 questions 19:10 19:11 quite 18:9</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 14:1 R-U-N-G-R-E... 26:16 raise 28:2</p>	<p>rate 13:11 16:3 28:20 30:13 rates 26:16 real 18:20 reality 19:24 really 19:19 25:8 25:22 reason 22:16,20 record 24:11 30:21,23 records 19:12 reduced 31:7 reflect 24:12 regard 29:17 regardless 21:18 22:3 regulated 16:12 REGULATO... 13:15 rehashing 29:20 related 31:8 relative 31:10 relatively 27:9 29:10,25 relevance 19:10 25:8,8,19 relevant 19:19 22:21 23:13,13 remain 23:25 remains 19:18 25:1 report 25:2 26:3 26:3 REPORTED 13:18 reporter 18:6 31:1,3 REPORTING 13:19 reports 25:4,9 26:18,25 representing 18:4 request 13:11</p>
---	--	--	--	--

<p>16:2,6 22:24 26:9 28:15,19 requested 19:20 21:20 requires 27:17 research 21:1 25:2,9 resolved 18:14 24:13,20,21,24 29:19,23 respond 26:7 retrieve 26:22 review 19:14 right 17:24 18:9 18:21 20:17 24:18 27:5,10 29:12,18 30:20 Riverside 14:21 17:12,22 Road 14:11 rules 21:19 Rungren 26:15 26:15 27:14,16 28:3,7,15 30:4 30:6</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 14:1 saying 20:14 says 21:19 22:3 30:12 Schnucks 20:19 20:20 21:16 Scott 26:15 27:12 28:6 search 28:5 second 23:17 see 22:16 29:10 29:24 30:7,18 30:19 seeing 18:10 seen 20:2 SENIOR 13:15 server 26:20</p>	<p>Service 13:1,12 13:13 14:6 17:7 set 25:13,14 Sewer 13:12 shaky 28:4 shoot 30:18 side 25:2 significant 26:25 27:17 similar 23:1,1 sir 17:13 smiling 29:1,5 somebody 20:9 somewhat 28:3 soon 28:25 Sorry 18:3,8 sort 25:5 sounds 24:16 28:1,23 speak 26:14 speaking 22:4 27:18 specific 17:17 23:19 spelled 26:16 Spencer 14:19 17:12 spoke 26:18 SR-2015-0302 13:11 St 14:12 26:17 Staff 14:2,6 16:4 16:10 17:4,6 18:11 19:13 20:18 21:20 22:3 23:2,12 23:15 24:10 28:25 Staff's 16:6 20:6 23:24 28:19 29:9 start 20:10 24:2 29:20</p>	<p>started 16:7 starting 16:18 state 13:2 19:3 statement 18:19 29:9,9 step 19:15 street 14:3,15,19 14:23 15:1 21:17 stuff 30:13 subject 19:14 submitted 28:16 subsequent 23:5 subsid-- 20:5 suggestion 30:11 Suite 14:4,15,23 sure 16:7 18:19 26:15,17,21 27:19 Swearengen 14:7 16:21</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 16:18 20:25 21:14 28:18,25 29:4,6,10 30:8 taken 22:5 31:5 31:6,10 takes 16:5 talk 20:11,24 26:6 talked 25:6 talking 24:12 27:20 30:7 talks 25:25 task 27:20 telephone 14:11 16:22 ten 26:23 terms 18:24 Thank 17:1 18:5 30:22 thereto 31:12 things 29:20</p>	<p>think 18:16,21 18:22 19:9,9 19:15,24 20:2 20:7,21 23:15 23:23 24:8,13 24:22 25:6 27:21 28:5,8 28:21 29:3,4,7 29:7,21 30:1,6 Thompson 14:2 16:13 17:6,6 19:21 22:11 23:15 24:3,6 24:13,15,18,23 26:5,8,11 27:3 27:6 28:21 29:5,12,23 thought 26:13 Threlkeld 13:18 31:3,19 TIGER 13:19 Tim 27:12 time 20:2,2 26:4 28:2,6 times 18:22 timing 28:11 Timothy 14:11 16:23 today 19:24 told 24:9 track 25:17 TRANSCRIPT 13:4 treasury 26:19 27:18 30:9 treated 18:15 trim 26:8 try 23:18 28:5 trying 25:17 28:1 turn 22:4 typewriting 31:7</p> <hr/> <p style="text-align: center;">U</p> <hr/>	<p>ultimate 18:20 unable 21:20 22:1 underlying 24:17 understand 18:14 24:19 27:8 29:2 unknowns 29:3 use 29:14 utility 19:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 19:10 valuable 23:22 view 21:6 voice 24:20 Volume 13:8 voluminous 25:12</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 29:22 walk 20:19 walking 21:17 want 16:8 21:22 22:7,9 23:10 26:12 wanted 20:5 wanting 16:11 wasn't 29:12 Water 13:10,12 14:10,13 16:2 16:19,22,23 22:13,15,19 way 20:14 21:5 25:4,9 we'll 27:11 we're 26:8 29:19 30:1,7,9 we've 20:1 24:14 went 28:8 Wenzel 14:18 17:11,11,22</p>
---	---	---	--	---

West 15:1	200-page 25:13	15:2 17:8		
whatever's 19:25	2010 25:4,7,10 25:18,19,25	65102-0360 14:5		
willing 21:15 26:8 27:9,10 29:24,25 30:2	26:4 28:14,17 2011 26:4 28:14 28:16	65102-0456 14:9		
wonder 23:21	2012 26:11	<hr/> 7 <hr/>		
words 29:14	27:11	727 14:11		
work 27:17,19 27:25	2015 13:6 25:3 25:12,13 26:18 26:22	<hr/> 8 <hr/>		
worked 18:22	221 14:23	800 14:4		
wouldn't 23:21	2230 14:16			
WR-2015-0301 13:11 16:2	<hr/> 3 <hr/>			
<hr/> X <hr/>	301 15:1			
<hr/> Y <hr/>	304 14:19			
yeah 18:18 27:14 28:3,6 28:14,15	312 14:8			
year 27:22 28:8	314.996.2279 14:12			
years 30:8	360 14:4 17:8			
yesterday 23:2 26:19	<hr/> 4 <hr/>			
<hr/> Z <hr/>	456 14:8			
<hr/> 0 <hr/>	<hr/> 5 <hr/>			
<hr/> 1 <hr/>	573.522.3304 15:2			
101 14:23	573.556.6622 14:24			
1382 31:4	573.634.8112 14:20			
187 24:2,3,10,13	573.635.7166 14:9			
189 24:3,10,15 24:19,21 25:1 25:23	573.751.5565 14:17			
191 24:5,8 25:25 26:2	573.751.6514 14:5			
196 24:9	<hr/> 6 <hr/>			
197 24:9	6 13:6			
<hr/> 2 <hr/>	63141 14:12			
2 13:8	650 14:15			
200 14:3,15	65101 14:20			
	65102 14:16,24			