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AUDIO RECORDING

IN THE MATTER OF CONFLUENCE RIVERS UTILITY OPERATING  
COMPANY, INC.'s REQUEST FOR AUTHORITY TO IMPLEMENT A  
GENERAL RATE INCREASE FOR WATER SERVICE AND SEWER  
SERVICE PROVIDED IN MISSOURI SERVICE AREAS

DATE: August 16, 2023

(Due to the quality of the recorded media,  
portions were unable to be transcribed and include  
inaudible portions. The transcript may also include  
misinterpreted words and/or unidentified speakers.  
The transcriber was not present at the time of the  
recording; therefore, this transcript should not be  
considered verbatim.)

TRANSCRIBED BY: CAROL A. BECKMANN, CSR

1 JUDGE HATCHER: First, Brian, our  
2 technology coordinator, please confirm that we are  
3 being recorded on the Webex. I am confirming for the  
4 record that we are being recorded on Webex. As  
5 everyone in the courtroom can see, we do not have a  
6 physical court reporter here today, so we will be  
7 having this transcribed at a later time. We -- the  
8 Commission has been in contact with the contracted  
9 court reporting service, they were unable to obtain  
10 someone to appear live, we discussed with them the  
11 possibility of obtaining a court reporter appearing  
12 via Webex, that was also unsuccessful, if a court  
13 reporter is able to join later via Webex, they will,  
14 and they will start their live transcription at that  
15 time and then transcribe the earlier portion. Because  
16 of that, please speak slowly and clearly into the  
17 microphone, identify yourself if you feel the need, I  
18 will try and remember to identify people as they start  
19 speaking, we will slowly make our way through this.

20 That said, I would like to make note of our  
21 commissioners in attendance. We have Chairman Scott  
22 Rupp on Webex. We have Commissioner Jason Holsman on  
23 Webex. We have Commissioner Glen Kolkmeyer in person.  
24 Commissioner Maida Coleman is excused due to a medical  
25 absence, she has been vocal about her knee, so I'm not

1 violating any HIPAA regulations to say she is still  
2 recovering from that knee surgery, we wish her well.

3 MR. WOODSMALL: Your Honor, can I  
4 level-set?

5 JUDGE HATCHER: Yes, please.

6 MR. WOODSMALL: So just so I understand  
7 where we're headed here, we're going to do the  
8 operations maintenance issue, there was another issue  
9 regarding the need to look at internalizing  
10 operations, my understanding, we're going to handle  
11 those at the same time because they have the same  
12 witnesses.

13 JUDGE HATCHER: You're talking about issue  
14 17; operations, maintenance, and oversight?

15 MR. WOODSMALL: Okay. And then on that  
16 issue, issue C was dropped, so it's just issue D. And  
17 then the only other issue we have to finish is the  
18 capital versus expense issue.

19 JUDGE HATCHER: Yes.

20 MR. WOODSMALL: And then the only thing I'd  
21 like to let you know is on the operations issue,  
22 Mr. Mitten will be handling the opening statement and  
23 all cross-examination, and I will be presenting the  
24 three company witnesses.

25 JUDGE HATCHER: Excellent. Thank you.

1 MR. WOODSMALL: Thank you.

2 JUDGE HATCHER: Okay. I think that was an  
3 excellent summary. Let's get started. Do the parties  
4 wish to have opening -- mini opening statements?

5 MR. MITTEN: Yes, Your Honor.

6 JUDGE HATCHER: Okay. Company, please  
7 proceed.

8 MR. MITTEN: If it pleases the Commission,  
9 for purposes of the record, my name is Russ Mitten,  
10 and I'm representing Confluence Rivers Utility  
11 Operating Company.

12 Since it made its first acquisition in  
13 Missouri, Confluence Rivers has been consistent in  
14 explaining to the Commission how it intended to  
15 provide operation and maintenance services for its  
16 facilities, and that is through the use of third-party  
17 contractors. And that's the same business model that  
18 our affiliates outside Missouri have told regulators  
19 in those states.

20 Public counsel contends it has a better  
21 idea, instead of using third-party contractors, public  
22 counsel proposes to bring responsibility for  
23 operations and maintenance inhouse; that is, those  
24 functions would be performed by Confluence Rivers  
25 employees. To accomplish this, public counsel

1 proposes to divide Confluence Rivers Missouri service  
2 area into nine districts, place each of the company's  
3 water and wastewater systems into one of those  
4 districts, and then hire a single employee for each  
5 district who would be solely responsible for all  
6 operations and maintenance activities in his or her  
7 district.

8           Doing so, public counsel claims would  
9 reduce Confluence Rivers' annual operations and  
10 maintenance costs by more than \$1,000,000. And to  
11 achieve these savings, public counsel proposes to  
12 allow just \$600,000 per year to cover all operations  
13 and maintenance costs. But the savings public counsel  
14 promises cannot be achieved. And the evidence will  
15 show, quite convincingly we believe, that public  
16 counsel's plan can most charitably be described as  
17 half-baked. That assessment seems harsh, but simply  
18 stated, Confluence Rivers cannot provide necessary  
19 operations and maintenance services for its systems  
20 for just \$600,000 a year.

21           I can prove my point by simply updating the  
22 compensation amount public counsel proposes in its  
23 plan. If you begin with the base compensation that  
24 Dr. Marke uses in his testimony, which is from an  
25 outdated MERIC study for 2021, if you update that

1 amount for cost of living increases in 2022 and 2023,  
2 and then you further adjust that number to reflect  
3 benefits and other overhead loadings related to  
4 employment using a formula developed by the  
5 U.S. Department of Labor Statistics, the number you  
6 arrive at for an individual employee, fully loaded  
7 compensation, multiplied by nine, already exceeds by  
8 more than \$100,000 the \$600,000 public counsel  
9 proposes to allow.

10 But the problems with public counsel's  
11 proposal doesn't stop there, because not only does the  
12 proposal underestimate pay and benefits, it also  
13 includes none of the costs Confluence Rivers would  
14 incur to give those nine employees the tools they need  
15 to do their jobs. Public counsel fails to account for  
16 the cost of vehicles, tools, spare parts, heavy  
17 equipment such as backhoes and mowers, or warehouses  
18 where that equipment would be stored. Public  
19 counsel's proposal also ignores the operational  
20 impracticalities of making one employee solely  
21 responsible for all operations and maintenance  
22 activities within a district.

23 Operations and maintenance is a  
24 24-hour-a-day, 7-day-a-week, 365-day-a-year  
25 responsibility. In addition to routine tasks, which

1 are numerous, extensive, and time-consuming, the  
2 company's third-party contractors are on-call and must  
3 monitor and maintain an emergency service phone line  
4 24 hours a day, 7 days a week, 365 days a year. They  
5 must also respond to all customer calls and  
6 notifications within two hours of receiving such  
7 calls. One person simply can't be expected to be  
8 solely responsible for all of the company's operations  
9 and maintenance requirements. And knowing what the  
10 job entails, how difficult would it be for Confluence  
11 Rivers to hire and retain employees to do such a job  
12 at any price.

13           The numerous and serious deficiencies in  
14 public counsel's proposal are not surprising, because  
15 there is no evidence in this case that Dr. Geoff  
16 Marke, the architect of the proposal, has any training  
17 or experience in designing, operating, or maintaining  
18 water and wastewater systems. There also is no  
19 evidence he's familiar or has even visited the systems  
20 Confluence Rivers currently owns and operates.

21           As Mr. Woodsmall stated in his opening  
22 statement, providing operations and maintenance for  
23 water and wastewater systems requires more than  
24 drawing boxes on a map; however, when you closely  
25 examine public counsel's proposal, boxes on a map is

1 all you get.

2           The numerous and significant defects in  
3 public counsel's proposal are discussed at length in  
4 surrebuttal testimony filed in this case by Josiah  
5 Cox, Todd Thomas, and Brent Thies, and I urge the  
6 Commission to engage those witnesses in a discussion  
7 of those defects when they appear later this morning.

8           Mr. Cox and Mr. Thomas each has a deep --  
9 in-depth knowledge and understanding of the systems  
10 Confluence Rivers owns and operates and what it takes  
11 to provide operations and maintenance services for  
12 those systems, please take advantage of your  
13 opportunity to ask questions regarding those matters.

14           And Mr. Cox and Mr. Thies can explain why  
15 the cost estimates included in public counsel's  
16 proposal don't add up and make no sense. As Mr. Cox  
17 explains in his surrebuttal testimony, 2.25 million  
18 per year is a much more realistic estimate of the  
19 actual cost of public counsel's proposal to bring  
20 operations and maintenance services inhouse, and that  
21 amount greatly exceeds what the company currently  
22 spends for third-party contractors.

23           Today marks the final appearances on the  
24 stand by all three of Confluence Rivers' witnesses on  
25 the issue, and I urge the Commission to not let that



1 opportunity pass without asking them all questions you  
2 might have about this issue.

3           For all of the reasons I mentioned, the  
4 Commission should reject public counsel's operations  
5 and maintenance proposal. Using third-party  
6 contractors is cost-effective and allows Confluence  
7 Rivers to ensure its systems are professionally  
8 maintained, that all applicable health, safety, and  
9 environmental regulations and requirements are  
10 consistently met, and that customers receive safe and  
11 adequate service.

12           But before concluding my statement, I'm  
13 going to -- want to make one final point, as part of a  
14 nonunanimous stipulation between staff and the  
15 company, the company has agreed to perform a formal  
16 cost benefit analysis comparing the use of third-party  
17 contractors to the use of inhouse personnel. The  
18 results of that analysis would then be provided to  
19 both staff and public counsel. And Confluence Rivers  
20 further promises to update that study prior to its  
21 next rate case filing; therefore, if any party wishes  
22 to contest the results of that study, or offer an  
23 alternative, they would be able to do so at that time.  
24 As I'm sure you can appreciate, the process that staff  
25 and the company have agreed to is vastly superior to

1 the proposal public counsel is making in this case.

2 That concludes my opening statement, Your  
3 Honor.

4 JUDGE HATCHER: Thank you. Are there any  
5 commissioner questions?

6 And before I get to that, we need to make  
7 sure that if your microphone is on, that your cell  
8 phone is sufficiently moved away, our IT department  
9 who is listening to the live stream online just  
10 reported that there was a little bit of feedback, so  
11 just be aware of that.

12 Any commissioner questions for Mr. Mitten?

13 COMMISSIONER HOLSMAN: Just a brief one,  
14 Judge.

15 JUDGE HATCHER: Mr. Kolkmeier.

16 COMMISSIONER HOLSMAN: Oh.

17 JUDGE HATCHER: Yes, go ahead, Commissioner  
18 Holsman.

19 COMMISSIONER HOLSMAN: Yes, thank you. How  
20 does the settlement on the consolidation affect OPC's  
21 -- you know what -- you know what, I'm going to ask --  
22 I'll ask OPC on their mini opening. Thank you.

23 JUDGE HATCHER: Commissioner Kolkmeier.

24 MR. KOLKMEYER: Thank you, Judge. Good  
25 morning.

1 MR. MITTEN: Good morning.

2 MR. KOLKMEYER: What year did Confluence  
3 buy their first system in Missouri?

4 MR. MITTEN: 2014.

5 MR. KOLKMEYER: Okay. Thank you. So  
6 relatively not long ago?

7 MR. MITTEN: Not long ago.

8 MR. KOLKMEYER: Less than ten years ago?

9 MR. MITTEN: Yes, sir.

10 MR. KOLKMEYER: Thank you.

11 JUDGE HATCHER: Thank you, Commissioner.  
12 Commissioner Hahn?

13 COMMISSIONER HAHN: Thank you. Just for  
14 clarification, do you have any employees that work on  
15 O&M in the State of Missouri --

16 MR. MITTEN: No.

17 MS. HAHN: -- direct employees -- they're  
18 all contractors?

19 MR. MITTEN: They're all contractors. We  
20 have employees who supervise the activities of the  
21 contractors, but no employees directly involved in  
22 operations and maintenance.

23 MS. HAHN: Okay. I do think have some  
24 questions then about supervision, but I'll save that  
25 for other witnesses.

1 MR. MITTEN: Mr. Thomas, or Mr. Cox, I  
2 believe could answer those questions, Commissioner.

3 MS. HAHN: Thank you.

4 JUDGE HATCHER: Thank you, Mr. Mitten.  
5 Staff?

6 MR. PRINGLE: May it please the Commission.  
7 Good morning, Commissioners. Good morning, Judge  
8 Hatcher. For the record, my name is Travis Pringle,  
9 and as a member of staff counsel I represent the  
10 commission staff regarding the issue of operations,  
11 maintenance, and oversight.

12 As Mr. Mitten described, the staff  
13 sub-issues under operation sub-issue 17A and 17B, the  
14 parties have reached a nonunanimous agreement on that,  
15 staff requests no further action from the Commission  
16 on those two sub-issues.

17 As to the remaining sub-issue, 17D, staff  
18 has taken no position on that issue; however, staff  
19 witness, Curtis Gateley, will be taking the stand  
20 today to answer any questions you may have about  
21 operations in general.

22 The parties have agreed to waive the  
23 testimony of staff witnesses Daronn Williams, and  
24 Andrew Harris; however, if the Commission, or the  
25 bench, has any questions for those two, they are

1 available to be called at your request.

2 And that is pretty much all I have. If you  
3 have any questions at this time for me, I'm happy to  
4 try to answer them, otherwise Mr. Gateley will be  
5 taking the stand later on behalf of staff.

6 JUDGE HATCHER: Thank you. Are there any  
7 commissioner questions for Mr. Pringle? Thank you,  
8 Mr. Pringle.

9 MR. PRINGLE: Thank you.

10 JUDGE HATCHER: Mr. Clizer?

11 For the record, Clizer is C-L-I-Z-E-R. And  
12 also a quick announcement, taking advantage of the  
13 break, I have been informed by email we will be joined  
14 between 9:30/9:45ish by a court reporter on Webex.

15 MR. CLIZER: Before I begin then, Your  
16 Honor, might I request that we break after openings  
17 until such time as we can get the court reporter since  
18 it's already 9:20?

19 JUDGE HATCHER: Let me think on that. Go  
20 ahead.

21 MR. CLIZER: Very well. Thank you. If it  
22 please the Commission, good morning. My name for the  
23 record again, John Clizer, and the Judge has done me  
24 the favor of already spelling it so I will not need to  
25 repeat.

1 I wish to pose a simple question to this  
2 commission, do you know how Confluence's system is  
3 currently operated? At a high level I think everyone  
4 who has read the testimony knows that Confluence  
5 employs third-party operators to manage its system,  
6 but what I'm asking is whether you have taken the time  
7 to dig deeper into that. Do you know, for example,  
8 how many operators are working for the company, what  
9 systems they serve, what certification they have? You  
10 see the problem is that I don't know that anyone  
11 outside of the company has actually done that, that  
12 anyone has decided to sit down and carefully review  
13 the company's operations with a critical eye, at least  
14 not before this case.

15 In this case, the OPC witness, Dr. Geoff  
16 Marke, decided to take a hard look at the company's  
17 current method of operating its water and wastewater  
18 systems and to ask is this really the most efficient  
19 way to do this. And the conclusion that Dr. Marke  
20 ultimately drew there was; No, this does not seem the  
21 most cost-effective or sensible way to operate a water  
22 or wastewater system. Perhaps at one time it was,  
23 and perhaps it makes sense to employ some operators,  
24 but to pay what Confluence now pays for what  
25 Confluence now receives, does not make sense.

1           Now part of coming to that conclusion was  
2 to determine what it would cost to operate  
3 Confluence's system assuming you employed people to do  
4 so directly. And to do this the first step is to  
5 obviously ask, How many people would you need to run  
6 Confluence's system? To answer that Dr. Marke looked  
7 into Confluence's system and asked is there any  
8 logical way that you could organize the work. And  
9 what Dr. Marke determined with there -- that was --  
10 that there was some quite obvious groupings, clusters  
11 if you will, of Confluence systems, and that by  
12 grouping the clusters together, while taking into  
13 consideration drive time and geographic disparity, it  
14 was possible to develop several districts or  
15 divisions. Dr. Marke ultimately determined nine such  
16 divisions to be reasonable. And then by assigning one  
17 operator for each division, Dr. Marke came up with  
18 nine operators.

19           The final step was to determine what it  
20 would cost to employ these nine operators, for this  
21 Dr. Marke relied on data generated by the Missouri  
22 Department of Higher Education and Workforce  
23 Development, in conjunction with the federal Bureau of  
24 Labor Statistics, to find the mean average cost of  
25 employing a water and/or wastewater operator in

1 Missouri. The final result of Dr. Marke's research  
2 show that nine water and wastewater operators could  
3 be employed for about \$540,000. Dr. Marke rounded  
4 this number up to 600,000 and proposed that this is  
5 what the Confluence should include in its rates to  
6 cover the cost of operating its systems. Given that  
7 Confluence is currently spending \$1.600,000, this  
8 would nearly -- this would free up about \$1,000,000 in  
9 actual cost savings for Confluence and ultimately its  
10 customers.

11 Now Confluence obviously does not like this  
12 proposal and its response to Dr. Marke's work is  
13 effectively three-fold. First, the company challenges  
14 the division of labor. Specifically the company  
15 chastises the OPC for having some divisions with few  
16 systems and others with more. Now as you will soon  
17 hear, this is a rather silly argument. Dr. Marke's  
18 division of labor closely matches the company's own  
19 division of labor on several occasions, and in others  
20 actually more generous than what the company is  
21 currently employing, if anything, the way Confluence's  
22 system is operated now suggests that there should be  
23 fewer boxes on that map. In addition, Confluence's  
24 current operations results in circumstances where some  
25 operators are overseeing more than 20 systems, while



1 others are only seeing one. So as I said, it's  
2 somewhat of a silly argument.

3           The next response is to say the OPC failed  
4 to acknowledge that it could take more than one  
5 operator to oversee a system, while there is slightly  
6 more truth to this argument, it is also -- there is  
7 also quite a bit of misleading testimony regarding it.  
8 For example, Confluence attempts to convince the  
9 Commission that OSHA requirements requiring closing --  
10 regarding enclosed spaces would prevent operators from  
11 inspecting systems on their own, that is not true, the  
12 enclosed spaces discussed in those OSHA documents are  
13 not entered into during a routine inspection, and  
14 instead are only entered into on an as-needed basis.

15           A similar issue occurs with regard to the  
16 Confluence's claims regarding repairs. Again, you  
17 don't need two people overseeing a system to deal with  
18 repairs, you just need one to inspect it, and another  
19 somewhere else that you can call in if a repair is  
20 needed. And if that sounds unreasonable to you,  
21 understand that that is in many ways what Confluence  
22 is already doing. In fact, as I intend to demonstrate  
23 today, the actual distance for that other person can  
24 be quite substantial under Confluence's existing  
25 method of operation.

1           The other argument the company raises  
2 concerns just the volume of work that an operator is  
3 being asked to perform. Unfortunately, this argument  
4 is based on some rather dubious math that appears to  
5 be an attempt to mislead this Commission. I'm going  
6 to go over those issues today as well.

7           The third and final issue Confluence has  
8 raised regarding Dr. Marke's recommendation suggests  
9 that the wages Dr. Marke used were too low,  
10 specifically Confluence contested the idea that  
11 Dr. Marke relied on 2021 data for his analysis, the  
12 company insisted that wages were -- needed to be  
13 adjusted upward for inflation. Now at the time the  
14 2021 data was the only data that we had available --  
15 or rather that Dr. Marke had available; however, the  
16 same body that produced that data has now produced the  
17 2022 data, and upon reviewing the 2022 data Dr. Marke  
18 was surprised to learn that the wage data that he used  
19 had actually decreased, not increased. In other  
20 words, it has actually become more cost-effective to  
21 hire water and wastewater operators, not less.

22           There are of course other nuances to this  
23 issue, but I will save those for the brief, so for now  
24 I will simply end on this thought, what the OPC is  
25 ultimately asking for in this case is not to diminish

1 Confluence's income, rather what the OPC is asking is  
2 for Confluence to work towards realizing cost savings,  
3 real cost savings, that we believe the company can  
4 achieve.

5           Now, reasonable minds can debate about the  
6 magnitude of those cost savings, the number of  
7 operators aren't necessary; however, Dr. Marke's  
8 testimony has identified that even if the company  
9 hired 20 operators, at his figured salary, the company  
10 could still see cost savings -- could still achieve  
11 cost savings of nearly half a million dollars. And I  
12 just want to point out, because there has been talk of  
13 this study that staff and the company have agreed to,  
14 and while I am happy to hear about that study, that  
15 study does not produce cost savings for customers now,  
16 it kicks the can down the road hoping that at some  
17 point in the future after the next rate case, some  
18 cost savings might be achieved. So the reason we're  
19 still up here right now is to see if it's possible to  
20 get those cost savings and rates now.

21           So with that in mind, I ask this Commission  
22 today to just keep an open mind and seriously  
23 critically think about what you're about to hear and  
24 ask, does this make sense, how much money could be  
25 saved if the company considered bringing even a

1 portion of their current operation staff inhouse, and  
2 if you decide that some money could be saved, give the  
3 company the necessary incentive to do so by  
4 disallowing whatever you deem to be unnecessary as  
5 part of the current \$1.6 million dollars spent.

6 Thank you. And I am ready to answer any  
7 questions.

8 JUDGE HATCHER: Are there --

9 CHAIRMAN RUPP: Judge, this is  
10 Commissioner Rupp, I have a question.

11 JUDGE HATCHER: Yes, go ahead, Chairman.

12 CHAIRMAN RUPP: For the record, Chairman  
13 Scott Rupp. I -- it's really not a question,  
14 Mr. Clizer, I just wanted to say thank you for using  
15 the "kick the can down the road" comment, we've gone  
16 an entire hearing without hearing that, and it just  
17 warms my heart when I hear that people use that  
18 terminology.

19 MR. CLIZER: Thank you, Chairman.

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

22 COMMISSIONER HOLSMAN: Judge, I have one.

23 JUDGE HATCHER: Go ahead, Commissioner  
24 Holsman.

25 COMMISSIONER HOLSMAN: Thank you. For the

1 record, Commissioner Holsman.

2 In your opening you said that your witness  
3 produced nine districts, but it's my understanding  
4 that there is an agreement to consolidate those  
5 districts down to -- and we haven't seen the end  
6 result, but I believe I heard two; is that correct?

7 MR. CLIZER: So allow me to clear that up  
8 because I understand exactly where the confusion is.  
9 What you are referring to are the division for rates,  
10 and there is, yes, a proposal for two rate districts  
11 for water, and two rate districts for sewer, and I'm  
12 not even sure that district is the right term in that  
13 scenario because it's more about the specific  
14 technology being employed by the system. What  
15 Dr. Marke is referring to is the logical way that you  
16 could break up the division of labor to operate  
17 Confluence's existing systems, it does not relate to  
18 how the systems are currently being charged or would  
19 be charged under the stipulation for rates, they are  
20 completely separate divisions -- I don't want to use  
21 the term divisions --

22 COMMISSIONER HOLSMAN: Okay. That --

23 MR. CLIZER: -- yeah, they're completely  
24 separate concepts.

25 COMMISSIONER HOLSMAN: That helps separate

1 that. I may have some questions for him on how he  
2 arrived at those districts, but, thank you,  
3 Mr. Clizer. Thank you, Judge.

4 JUDGE HATCHER: Thank you, Commissioner.  
5 Any other commissioner questions?

6 MR. CLIZER: I --

7 JUDGE HATCHER: I have a quick one. I'm  
8 sorry, Mr. Clizer.

9 MR. CLIZER: Of course.

10 JUDGE HATCHER: This is the Presiding  
11 Officer, Judge Charles Hatcher. I haven't heard you  
12 mention the word "imprudence," is --

13 MR. CLIZER: Would you like me to use the  
14 word "imprudence"?

15 JUDGE HATCHER: Are you -- is OPC's  
16 position that the use of third-party contractors is in  
17 this situation imprudent, semicolon, or is OPC's  
18 position that the company can do much better than  
19 where it is now spending for these services?

20 MR. CLIZER: Your Honor, I hate to do this,  
21 but if you will give me the luxury, I would prefer to  
22 defer that to my brief and allow me to think on it.

23 JUDGE HATCHER: Granted.

24 MR. CLIZER: Or --

25 JUDGE HATCHER: I withdraw my question.

1 MR. CLIZER: -- I defer the question to  
2 Dr. Marke.

3 JUDGE HATCHER: Excellent. All good  
4 solutions. Okay. Thank you, Mr. Clizer.

5 It's 9:30, we have been informed that we  
6 may be joined by a court reporter shortly, I'm sure  
7 that depends in great amount on the court reporter's  
8 schedule this morning, we have a motion by the Office  
9 of Public Counsel to go into recess, which would  
10 effectively mean that we started a half an hour ago  
11 and would be going into recess, because the time of  
12 these hearings, and the time of our commissioners is  
13 precious, my inclination is to deny the motion and  
14 press forward; however, I understand that  
15 commissioners may have a different viewpoint and I  
16 will defer if any commissioner would like to speak up  
17 and offer a different solution. Okay. Denied. Let's  
18 go ahead and call a first witness.

19 MR. WOODSMALL: Thank you, Your Honor.  
20 David Woodsmall on behalf of the company. We would  
21 call Josiah Cox to the stand.

22 JUDGE HATCHER: Thank you. And as Mr. Cox  
23 makes his way to the stand, go ahead and have a seat,  
24 his name is spelled J-O-S-I-A-H, C-O-X, he's already  
25 been sworn in, just a reminder to him and those

1 listening, that still applies. Your witness.

2 MR. WOODSMALL: Thank you, Your Honor. And  
3 I believe just for the clarity of the record,  
4 Mr. Cox's testimony, his direct, is Exhibit 4,  
5 rebuttal is Exhibit 5 and 5C, surrebuttal is  
6 Exhibit 6, those have been offered and admitted, I  
7 tender the witness for cross-examination.

8 JUDGE HATCHER: Thank you. And we'll go to  
9 cross-examination. Staff.

10 MR. PRINGLE: No cross, Judge. Thank you.

11 JUDGE HATCHER: Mr. Clizer?

12 MR. CLIZER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. CLIZER:

15 Q. Good morning, Mr. Cox.

16 A. Good morning.

17 Q. You are the president of Central States  
18 Water Resources; correct?

19 A. Correct.

20 Q. And you're generally familiar with the  
21 operation of your own systems here in Missouri;  
22 correct?

23 A. Correct.

24 Q. You're familiar with the regulatory  
25 structure concerning the operation of water and waste



1 water systems?

2 A. Which regulatory structure?

3 Q. Those imposed by the Missouri Department of  
4 Natural Resources.

5 A. Yes.

6 Q. So you feel yourself quite knowledgeable on  
7 those; correct?

8 A. I know quite a few of them.

9 Q. Good. I would like to have a discussion  
10 with you today to help me understand how Confluence's  
11 system is currently operated, and I'm going to start  
12 with just asking some rather basic questions, do you  
13 need to be a certified -- do you need to be certified  
14 with the Missouri Department of Natural Resources to  
15 be a wastewater operator?

16 A. You do.

17 Q. Do you need to be certified with the  
18 Missouri Department of Natural Resources to be a water  
19 operator?

20 A. Yes, you do.

21 Q. All right. How many times does a operator  
22 need to inspect a water system?

23 A. Five times a week.

24 Q. Five times a week. How many times do they  
25 need to inspect a wastewater system?

1           A.     We require three days, three times a week  
2 for a mechanical plant. One, sometimes three, on our  
3 MBBR plants. A MBBR is a Moving Bed Bio Reactor, so  
4 it's a secondary plant that post-processes waste from  
5 lagoons or sand filters.

6           MR. CLIZER:   And, Your Honor, I'm not sure  
7 what the exact protocol here is, but I will make a  
8 motion for the ability to move about the well.

9           Q.     (By Mr. Clizer.) Can you see what I've  
10 written?

11          A.     I can.

12          Q.     All right. So we've got -- do I have this  
13 right, water is five times a week, wastewater is  
14 three times a week?

15          A.     That's correct; for basic inspections, that  
16 doesn't take care of, you know, repairs, work orders,  
17 all of that good stuff.

18          Q.     I understand. Trust me, we're going to get  
19 into a lot of things here.

20          MR. CLIZER:   Oh, I'd like to mark an  
21 exhibit, this should be 231.

22          JUDGE HATCHER:   So marked.

23          Q.     (By Mr. Clizer.) Dr. Cox -- Mr. Cox, I  
24 apologize. There is several different pages here,  
25 this is a compilation of several different things,

1 we're just going to start with the first two pages,  
2 can you identify that for me?

3 A. The front says, "Data Information Request."

4 Q. This would be a data information request  
5 that the OPC issued to Confluence Rivers; correct?

6 A. Correct.

7 Q. And if you'll turn to the next page, this  
8 is the attached Excel file referenced in this?

9 A. I see the Excel file.

10 Q. Now, Mr. Cox, you'd agree with me that this  
11 Excel file is an outline of the water and wastewater  
12 operators you have managing your system according to  
13 your data request?

14 A. Yeah, so I think maybe there is some  
15 clarifications needed on that, those are the  
16 operator's licenses that were assigned to each of  
17 those plants, so there is more technicians who work on  
18 the plants, they're just the operators that are  
19 assigned.

20 Q. Really?

21 A. Yeah, I mean, we -- you have mechanics,  
22 plumbers, electricians. Oftentimes the mechan- -- the  
23 technicians make more money than the operators  
24 themselves.

25 Q. So when we asked you in this DR to identify

1 the other staff assigned to this, you did not include  
2 that other staff?

3 A. No, in fact, we did that in our rebuttal  
4 testimony we included the 22 people the operations  
5 firm had working on the other systems.

6 Q. Why did you not update this DR with the  
7 other staff as requested?

8 A. These -- you asked for operators, these are  
9 certified operators, we gave you the answer you were  
10 looking for.

11 Q. Let's dive into that for just a moment now,  
12 I wasn't expecting to go off the rails this early, can  
13 you look at the headings at the top of this Excel  
14 file? Would you agree with me that they read  
15 "Utility, operating company, facility, chief operator,  
16 other employees but not a complete list of staff;" is  
17 that correct?

18 A. That's correct.

19 Q. Now are you familiar with the original  
20 staff data request 0241?

21 A. I am not.

22 Q. That data request had the same Excel file  
23 as this, sans a few names, and if we need to I can go  
24 print a copy and get them, would you agree with me on  
25 that?

1 A. Agree with you what?

2 Q. That that 0241 had the same Excel file as  
3 this?

4 A. I mean, I can take your word for it.

5 Q. And do you see what our request is where we  
6 say, "Referencing company's response to staff DR 0241,  
7 for each system listed in column B, please list the  
8 name of all staff not included in column D," do you  
9 see that?

10 A. I see that.

11 Q. And your response was, "Please find  
12 attached the updated staff DR 241 exhibit attached,"  
13 do you see that?

14 A. I see that.

15 Q. So what you're telling me off the bat is  
16 that Confluence didn't truthfully answer this DR, you  
17 didn't include all staff as requested?

18 A. But then we came back and updated our --

19 Q. Did you truthfully answer this DR?

20 MR. WOODSMALL: Your Honor, I object, being  
21 argumentative.

22 JUDGE HATCHER: I'm a little concerned  
23 about decorum, Mr. Clizer. Go ahead.

24 MR. CLIZER: Your Honor, how am I to  
25 proceed if the company can lie in its DR responses?

1 MR. WOODSMALL: I object.

2 JUDGE HATCHER: Calmly.

3 MR. WOODSMALL: And I'd also ask him to  
4 quit approaching the witness.

5 MR. CLIZER: I have permission to move  
6 about the well, I am not approaching the witness, I am  
7 standing in the well.

8 JUDGE HATCHER: I think his movement is  
9 fine and nonaggressive, I think his question delivery  
10 might be toned down a bit.

11 MR. CLIZER: I will do my best, I am a  
12 passionate person, my apologies.

13 Q. (By Mr. Clizer.) I am going to continue  
14 under the assumption that this DR is accurate and that  
15 these are all of the staff you have operating these  
16 systems as indicated in your DR response.

17 The next two pages you would agree with me  
18 are an excerpt from Dr. Marke's rebuttal testimony;  
19 correct?

20 A. Correct.

21 Q. And the last page, just for everyone's ease  
22 of reference, is a map of the state with the counties  
23 listed; correct?

24 A. Correct.

25 Q. Do you dispute that map and those counties?

1 A. No.

2 Q. Good. Are you familiar with the Missouri  
3 Department of Natural Resources water and wastewater  
4 operator search system?

5 A. Search system like I can look up the  
6 operator's --

7 Q. Correct.

8 A. -- licenses?

9 Q. Yes.

10 A. Yes.

11 MR. CLIZER: Brian, can we bring up that  
12 computer?

13 MR. LAMONS: You can exit -- escape on that  
14 keyboard right in front of you?

15 MR. CLIZER: Escape?

16 MR. LAMONS: Just hit "escape".

17 MR. CLIZER: Can you -- I do not want to  
18 approach the witness, I'm just going to direct how to  
19 handle the -- never mind, I can do it from here. I'll  
20 try. Can you hit the "Internet Explorer" icon? Can  
21 you go to the top where it says "water" and hit "drop  
22 down" for me and hit "browse water"? Oh, that's good.  
23 No, no, that's fine. Scroll down until you see on the  
24 side on the popular links, can you hit "Operator  
25 certification" for me? Can you scroll down until you

1 see -- Stop. That's fine. "Operator certification  
2 database search." All right.

3 Your Honor, I'd like to mark another  
4 exhibit.

5 JUDGE HATCHER: So marked, 232. 232  
6 exhibit number.

7 Q. (By Mr. Clizer.) Now, Mr. Cox, can you hit  
8 "Operator search" on that top row? And can you type  
9 in for the certification number 10745 and hit "search"  
10 for me? And can you hit "view" next to "Victor  
11 Wright"? And you would agree with me that what comes  
12 up is what's shown on this page here?

13 A. Yes, on your first page; correct.

14 Q. And you would agree with me that if I were  
15 to cross-reference the name -- well, Victor Wright is  
16 actually not one of those listed on here, we should  
17 have done one that has a certified number listed.

18 MR. WOODSMALL: Your Honor, at this point  
19 I'd object, I don't believe there has been --

20 JUDGE HATCHER: Mr. Woodsmall, first of  
21 all, microphone, please.

22 MR. WOODSMALL: Oh, I'm sorry. I'd object  
23 at this point, there has been no foundation laid,  
24 there is nothing to show that this witness is  
25 responsible for putting information into this



1 database, who compiles it, whether he's seen this  
2 before.

3 JUDGE HATCHER: I'm inclined to agree.

4 MR. CLIZER: I am laying the foundation now  
5 and I am only interested in establishing that these  
6 documents correspond to what is included in the  
7 database.

8 JUDGE HATCHER: Would you stipulate to  
9 that?

10 MR. WOODSMALL: No, I have no clue who put  
11 together this information, who submits the information  
12 to whoever puts it together, we're just asking  
13 questions about things that show up on the internet.

14 JUDGE HATCHER: On the official Missouri  
15 Department of Natural Resources web page.

16 MR. WOODSMALL: I will give you that, the  
17 problem is what information -- who submits the  
18 information, who compiles the information, how often  
19 is it updated, all of that stuff, that needs to be  
20 established.

21 JUDGE HATCHER: Overruled. But proceed  
22 quickly, Mr. Clizer.

23 MR. CLIZER: It's going to be a long day, I  
24 apologize.

25 JUDGE HATCHER: I meant foundationally.

1 MR. CLIZER: Ah.

2 Q. (By Mr. Clizer.) Can you flip through this  
3 book until you find Brady Graves?

4 JUDGE HATCHER: Mr. Clizer, can you explain  
5 why are we looking at the certifications?

6 MR. CLIZER: Because we are going to go  
7 into an in-depth dive of all of their operators, where  
8 they're operating, what certifications they have, and  
9 the service areas they're covering.

10 MR. WOODSMALL: And therein lies the  
11 problem, when he says all of their operators, I  
12 believe that's what Mr. Cox was trying to explain, so  
13 I understand he's attempting to lay a foundation, but  
14 when he characterizes it as "all operators," I believe  
15 that mischaracterizes; one, the information we gave  
16 him, and what the information on DNR is.

17 MR. CLIZER: My apologies, let me correct,  
18 all of the operators listed in the DR response that  
19 the OPC received requesting a list of all of the  
20 staff.

21 JUDGE HATCHER: That seems foundational,  
22 Mr. Clizer, that would have been good to know. So if  
23 I can summarize, the OPC's non-statement, Exhibit 232,  
24 purports to be the translated list of employees that  
25 are listed as operators as researched by OPC on the

1 Department of Natural Resources website and then  
2 printed out?

3 MR. CLIZER: Correct.

4 JUDGE HATCHER: Did the company provide you  
5 with any certification information, Mr. Clizer?

6 MR. CLIZER: They provided the  
7 certification number of the chief operators on this  
8 sheet, which is the far right column.

9 JUDGE HATCHER: And what is the purpose of  
10 going through every name on the list to inquire about  
11 their qualifications?

12 MR. CLIZER: I'm not going -- I apologize,  
13 Your Honor, I do not intend to go through every name  
14 on the list to establish their qualifications, I am  
15 attempting to begin the process of my cross to  
16 establish where people live, where they are working,  
17 and how this entire system is operated, which is  
18 directly germane to the OPC's entire argument.

19 JUDGE HATCHER: That these particular  
20 operators already live in far-flung places better than  
21 -- or farther than the boxes --

22 MR. CLIZER: I will endeavor -- it is going  
23 to be much easier once the entire thing is out there,  
24 but that is -- you're starting to get the gist of it.

25 JUDGE HATCHER: Mr. Clizer, I do not want

1 to go through every employee, can you land this plane  
2 a different way?

3 MR. WOODSMALL: Your Honor, not to  
4 interrupt, but if it helps, we will stipulate that  
5 there are 21 certified operators in our systems.

6 MR. CLIZER: That is not true.

7 UNIDENTIFIED SPEAKER: That's not true,  
8 you're wrong, that's wrong on that, the 20- -- there  
9 is 22 people working on it, not 22 certified  
10 operators.

11 JUDGE HATCHER: Okay. I think that the  
12 Commission at this point would like to clarify what a  
13 certified operator means, who that includes, how many  
14 people -- let's finish that small discussion, and then  
15 we will move on to how in-depth we're going to get.

16 MR. WOODSMALL: All right.

17 Q. (By Mr. Clizer.) Mr. Cox, you would agree  
18 with me that this is a representation of the map  
19 included in Dr. Marke's testimony; correct?

20 A. Yes.

21 Q. All right. I would like to go through  
22 where your operators are currently working and what  
23 jobs they're serving.

24 A. Yeah, and this is where I think you just  
25 would completely disagree, because we have multiple

1 technicians running different places across the entire  
2 state, so --

3 JUDGE HATCHER: Mr. Clizer, I need answers  
4 about what an operator is before we move into more  
5 questions.

6 MR. CLIZER: My apologies, Your Honor.  
7 Would you prefer, if I can, I can submit these Code of  
8 State Regulations defining the certification process?

9 JUDGE HATCHER: No.

10 MR. CLIZER: No? What --

11 JUDGE HATCHER: What I want is either you  
12 to ask Mr. Cox some questions or I will.

13 Q. (By Mr. Clizer.) All right. Let's start  
14 there. What is a water operator?

15 A. So a water operator is someone who has a  
16 certification, which is training and time spent  
17 operating, depending on the certification, to have a  
18 license to be able to operate a water plant. And on  
19 the wastewater side, it's the same. So different  
20 classes require different amount -- different tests,  
21 different educational components, and different  
22 amounts of experience, and then ongoing continuing  
23 education credits for the operators.

24 Q. And, Mr. Cox, you define all of the staff  
25 included on that list as operators; correct?

1 A. On this answer?

2 Q. No, on the answer the DR requests, the  
3 Excel spreadsheet?

4 A. That is correct.

5 Q. Those are all operators.

6 MR. CLIZER: Is that sufficient, Your  
7 Honor, or are there more questions?

8 JUDGE HATCHER: No, I have more questions.

9 MR. CLIZER: Very good.

10 JUDGE HATCHER: Mr. Cox, do the people who  
11 work for a certified operator, do they all have to be  
12 certified?

13 MR. COX: No, they don't, you typically  
14 need different trades, so you need mechanics,  
15 electricians, plumbers, you know, oftentimes the  
16 skilled trades people are your really higher-level  
17 employees than the lower-level operators.

18 JUDGE HATCHER: Thank you. Would you  
19 please describe how this works? The thought in my  
20 mind is forming that Confluence hires a certified  
21 operator who has a license, I'm thinking analogous to  
22 real estate brokers, how there is a broker, and then  
23 there is agents underneath, but I'm not really sure,  
24 but -- and then the operator then hires these other --  
25 No? Okay.

1 MR. COX: No, no, so --

2 JUDGE HATCHER: Can you describe it to me?

3 MR. COX: Yeah. Absolutely. So contract  
4 operations and maintenance for the water and waste  
5 water industry is a big industry, I think 15 percent  
6 of all water and wastewater systems in the country  
7 are contract operated, and really it's because each of  
8 those firms, those contract operations and maintenance  
9 firms, they have the -- you know, the expertise, the  
10 people, the trades people, who work for those firms,  
11 right? So what Central States does is we bid out our  
12 contract operations and maintenance to some  
13 professional firms who do this all over the country;  
14 right? And we do it geographically to try and attract  
15 more bidders. And then those firms who are offloading  
16 the risk, the permanent risk, to those contract  
17 operations and maintenance firms. So those guys are  
18 responsible for doing all of the ongoing operations  
19 and fixes at the plants in the normal course of  
20 business.

21 JUDGE HATCHER: Am I counting right you  
22 named two levels there, you hire the regional --

23 MR. COX: We got contract operations --

24 JUDGE HATCHER: -- contract operations and  
25 then they hire the --

1 MR. COX: -- they have operators and  
2 technicians who work for them. Yeah. So we -- you  
3 know, some states we have one operator for the entire  
4 state, other states like Missouri, have multiple  
5 operators, you have nationwide companies like Jacobs  
6 Engineering that worked for us before, so it's kind of  
7 all over the country.

8 JUDGE HATCHER: Okay. Yes. Thank you. Go  
9 ahead.

10 MR. CLIZER: I apologize for not having  
11 answered those questions -- or asked those questions.

12 Q. (By Mr. Clizer.) All right. Let's get  
13 started. Can you find Brian -- well, can you find  
14 Hillcrest on that Excel spreadsheet?

15 UNIDENTIFIED SPEAKER: Your Honor, for the  
16 Commission's assistance, it's at the very bottom of  
17 that spreadsheet.

18 A. I found it.

19 Q. (By Mr. Clizer.) And you would agree with  
20 me that for Hillcrest the chief operator listed is  
21 Mike Hornbuckle; correct?

22 A. Correct.

23 Q. And you'll help me out here, Hillcrest is  
24 in Cape Girardeau; right?

25 A. Correct.



1 Q. That would be that one there?

2 A. Yes; that's correct.

3 Q. I'll put a pin in that. So we have brown  
4 for Mike Hornbuckle. And the Hillcrest there is a  
5 water and a wastewater system; right?

6 A. That's correct.

7 Q. Would you like me to mark that as two  
8 different ones?

9 A. Your call.

10 Q. For now I'll keep it at one. And in  
11 addition to Mike Hornbuckle, there is a secondary  
12 operator listed, Brian Strickland; right?

13 A. That's correct.

14 Q. I'm going to go ahead and put pink in for  
15 Brian Strickland. All right. Now, help me out here,  
16 how often does Mike Hornbuckle have to inspect the  
17 system? You said it was five times; correct?

18 A. The water site, five times.

19 Q. Five times.

20 A. He has to test the water five times, once a  
21 day.

22 Q. Five times a week?

23 A. Five times a week. So he inspects and  
24 tests, both.

25 Q. Inspect and test. And just to be clear,

1 both of those people are working for Strickland  
2 Engineering; right?

3 A. That's correct; Strickland is a contractor  
4 in that area.

5 Q. Strickland is a contractor in that area.  
6 And how often does Brian Strickland get to that  
7 system?

8 A. I don't know the answer to that question.

9 Q. You don't know the answer to that question.  
10 And he has to check the Hillcrest system, wastewater  
11 system, three times; right?

12 A. That is correct.

13 Q. Is the Hillcrest wastewater system  
14 mechanical or is it just a lagoon?

15 A. It's mechanical, so it has a moving bed bio  
16 reactor on the back end of a three-cell lagoon --

17 Q. All right.

18 A. -- with UV disinfection.

19 MR. CLIZER: Your Honor, I need to mark  
20 another exhibit.

21 JUDGE HATCHER: So marked, 233. 233.

22 Q. (By Mr. Clizer.) Mr. Cox, you'd agree with  
23 me that this is Confluence Rivers' data -- response to  
24 staff data request 0040?

25 A. Yes.

1 Q. And you would agree with me that this data  
2 response includes the contract with Strickland  
3 Engineering?

4 A. Yeah, I believe so.

5 Q. Can you turn to the scope of operation  
6 services on page 11 of 12?

7 A. I see it.

8 Q. You would agree with me that under line two  
9 it says, "Only make weekly or more frequent visits to  
10 the treatment facility"?

11 A. The state requirement -- it's, "or more  
12 frequently," the state requirement is five. We have  
13 tests for every single day on record with DNR.

14 Q. All right. We'll deal with that later as  
15 well, but for right now you would agree with me that  
16 this contract only requires weekly?

17 A. Yeah, we -- Correct. Or what's required.

18 Q. So how long does it take Mr. Hornbuckle to  
19 visit that system?

20 A. Probably a couple of hours.

21 Q. All right. Walk me through that.

22 A. So he goes into the building, he has to  
23 perform water tests, he has to go through and make  
24 sure all of the systems are operational, he has to  
25 physically inspect, in fact, I think we have a whole

1 work order system that goes through each one of these  
2 tasks, so I think we have 70,000 tasks that are  
3 performed in Missouri, so we go through a checklist,  
4 and that checklist changes depending on what cycle  
5 we're in. So his initial visit, so there is -- I  
6 think there is four weeks in a month, one week he may  
7 have to do blower maintenance, a blower check, valve  
8 checks, all of that, so really it's probably two hours  
9 a visit, sometimes more depending where we're at on  
10 preventative maintenance schedules.

11 Q. So a two-hour's visit?

12 A. At a minimum.

13 Q. At a minimum. We'll come back to that as  
14 well.

15 A. Yeah, and by the way, some of those have to  
16 be two people, so if you're doing a valve check,  
17 you've got to check two valves when you're looking at  
18 the water system to see if those are going, so -- or  
19 if you're doing a preventative maintenance schedule on  
20 a blower, it takes two people on the electrical panel,  
21 so on and so forth.

22 Q. So he has to have two people to do that  
23 check?

24 A. Correct.

25 Q. Does he do that every time?

1 A. Not every time.

2 Q. How often does he do that check?

3 A. It really depends on the system. We got a  
4 whole work order management system that goes through  
5 every one of those tasks.

6 Q. Okay.

7 MR. CLIZER: I am going, Your Honor, to  
8 endeavor to move as quickly as possible through this,  
9 I understand the Commission's time is precious.

10 Q. (By Mr. Clizer.) Mr. Cox, can you find  
11 Port Perry on that Excel spreadsheet, it's just above  
12 Hillcrest.

13 A. I see it.

14 Q. And that's in Perry County; right?

15 A. That's correct.

16 Q. That's right here; right?

17 A. That's correct.

18 Q. And that would be Brian Strickland as the  
19 chief operator, Mike Hornbuckle as the secondary;  
20 correct?

21 A. That's correct.

22 Q. And there is a third name listed there;  
23 isn't there?

24 A. Yeah, I believe so, Charles somebody.

25 Q. Charles?

1 A. Charlie, so --

2 Q. I've been pronouncing it Staffeldt. So  
3 right now we have three people between these two  
4 systems; is that right?

5 A. That includes -- does not include  
6 technicians, but correct, operators.

7 Q. How long does it take to check a waste  
8 water system?

9 A. A couple of hours.

10 Q. A couple of hours.

11 A. Lift stations, I mean, you -- so both  
12 Hillcrest and Port Perry have lift stations, so  
13 Port Perry is half forced main, and half gravity, so  
14 each of the lift stations has to be visited as well.

15 Q. Can you give me an estimate, it is two,  
16 three hours?

17 A. Sure, but that does not include when you  
18 have to do some of your routine maintenance, so any of  
19 the preventative maintenance schedules that go along  
20 with each mechanical components, that doesn't include  
21 that.

22 Q. I'll put two hours.

23 A. That's not what I said, sir, it's --

24 Q. Oh, I'm sorry.

25 A. -- two hours sometimes, four hours other

1 times.

2 Q. Two to four hours?

3 A. It depends on the day. And that's not one  
4 person, that's multiple people, because your  
5 technicians go out there and do preventative  
6 maintenance schedules.

7 Q. All right. That gives us a good baseline.  
8 I'm going to switch gears on you, I'm going to talk  
9 about David Duncan, okay? Can you find David Duncan?  
10 And I'll help you out, he is the third name along, if  
11 you start in that second sort of block at Berkshire --  
12 oh, I'm sorry, not on that sheet, the Excel  
13 spreadsheet, I apologize.

14 JUDGE HATCHER: For everyone, that is  
15 halfway down, it's listed as "Central Rivers, dash,  
16 Berkshire." Mr. Clizer, would you just locate the  
17 information, tell the witness to look at it and  
18 confirm it, so that we can move this question along?

19 MR. CLIZER: I'll be more than happy to  
20 make this as fast as possible, and let me know how I  
21 can make it speedier.

22 JUDGE HATCHER: Well, like I said, by  
23 announcing where the information is that we're all  
24 looking for, because we're spending 30 seconds each  
25 time, all of us, looking to see where you're

1 referencing, including the witness.

2 MR. CLIZER: I will --

3 JUDGE HATCHER: Can you just point it out,  
4 please?

5 MR. CLIZER: I will. I will endeavor to do  
6 that. I apologize, Your Honor.

7 Q. (By Mr. Clizer.) Let's get right to it,  
8 you would agree with me that David Duncan -- and we'll  
9 just -- we'll just speed through this, about halfway  
10 down that second block in the middle of the Excel  
11 file, would you agree with me that David Duncan is  
12 appearing at Berkshire, Clemstone, County Hill,  
13 Countryside Meadows, Fox Run, Park Estates, Prairie  
14 Fields, Private Gardens, and Wilmar Estates?

15 A. I do.

16 Q. And if you'll indulge me, again trying to  
17 speed that up, you would agree with me that those are  
18 these systems right here?

19 A. Yeah, I agree with that. I actually know  
20 this Central Rivers system very well, so I would say  
21 this is a great example of how what you're proposing  
22 doesn't work, because this system is forced main, so  
23 there are multiple lift stations across the entire  
24 system, and it requires -- since they're sand filters,  
25 it requires much more inspection work than a



1 traditional plant.

2 Q. And that's where I'm getting confused by,  
3 how is David Duncan managing to inspect all of these  
4 systems in a week?

5 A. He's not managing all of these -- he's a  
6 operator listed on there, there is technicians that  
7 are inspecting this on top of David Duncan.

8 Q. So you have noncertified people making the  
9 inspections?

10 A. We have technical people working looking at  
11 the mechanical systems, looking at the pump systems,  
12 looking at the lift stations, that would be a plumber,  
13 an electrician, or a mechanic.

14 Q. I understand. Are the operators themselves  
15 inspecting the system?

16 A. The operators themselves examine the plant.

17 Q. I just -- I want to make sure I'm clear, do  
18 the operators participate in the inspection?

19 A. It depends on which inspection you're  
20 talking about. For a lift station, or, for example,  
21 for this, because it's a forced main system, they have  
22 individual water pumps at every house, it doesn't take  
23 a certified operator to look at a lift station, it  
24 does take a certified mechanic and/or electrician to  
25 look at a lift station.

1 Q. Let's just come back to this. The  
2 inspection has to be done three times a week, is that  
3 by an operator?

4 A. By an operator.

5 Q. Yes. All right. So David Duncan is  
6 inspecting each of these systems three times a week?

7 A. There is four operators listed there.

8 Q. All right. Well let's cut into that then.  
9 Turning back to the DNR website, can you look up  
10 Terell Sauls for me? Not in that, you're going to  
11 actually have to look it up on the website, he's not  
12 certified.

13 JUDGE HATCHER: We're not looking up things  
14 to become evidence. No, sir.

15 MR. CLIZER: How would the Commission like  
16 to take note to the fact that Terell Sauls is not  
17 certified?

18 JUDGE HATCHER: Mr. Clizer, that's up to  
19 you, I'm not trying your case.

20 Q. (By Mr. Clizer.) You would agree with me  
21 that you can't find Terell Sauls in a search of the  
22 Commission's -- of the DNR website?

23 A. I have no idea. And I know that a  
24 certified operator is assigned to every one of these  
25 plants. In fact, we check their certifications on a

1 quarterly basis to make sure there is a certified  
2 operator associated with every plant.

3 Q. Let's just move on. The chief operator,  
4 running down the Excel spreadsheet on the left-hand  
5 side, the far -- for the entire first block is Brady  
6 Graves; correct?

7 A. I see that.

8 MR. WOODSMALL: Your Honor, not to  
9 interrupt, but may I approach the witness to give him  
10 a bottle of water?

11 JUDGE HATCHER: Yes. And that is not  
12 correct, witness, nor counsel, Brady Graves is the  
13 majority name in the first block, but there are other  
14 names listed as chief operator.

15 MR. CLIZER: You are correct. I apologize.  
16 I know where these are, it will take time  
17 to ask the witness, may I just start pinning them?  
18 All right. Thank you.

19 MR. WOODSMALL: Your Honor, I'm somewhat  
20 worried about the clarity of the record, is this  
21 exhibit that he's creating going to be offered into  
22 the record? Is someone laying the foundation for the  
23 location of all of these pins? This is turning into a  
24 train wreck, Your Honor.

25 MR. CLIZER: You are.

1 JUDGE HATCHER: Mr. Clizer, please address  
2 the bench.

3 MR. CLIZER: Apologies. The foundation for  
4 the location of the pins is the DR response.

5 JUDGE HATCHER: I -- Mr. Woodsmall, I did  
6 not hear an answer to your question, I don't know the  
7 answer to your question, I also didn't hear an  
8 objection, so I'd rather just move on.

9 I'm going to go out of turn a little bit.  
10 Mr. Cox, do you know how much the disallowance is that  
11 is being requested by OP -- it's a million on this?

12 MR. COX: It's a million dollars; right.

13 JUDGE HATCHER: Okay.

14 MR. COX: That's why we're sitting here  
15 going through pins.

16 JUDGE HATCHER: Hey, Dr. Marke, how many  
17 pins do you think you're going to put on there?

18 DR. MARKE: Quite a few.

19 JUDGE HATCHER: Let's take a recess, it's  
20 10:09 now, let's come back at --

21 DR. MARKE: We're going to try ten, I think  
22 we can do it.

23 JUDGE HATCHER: Let's come back at 10:20.  
24 10:20. We're at recess and off the record.

25 (Short break held off the record.)

1 JUDGE HATCHER: Update on our court  
2 reporter, she is still having issues logging into the  
3 Webex, so we will continue slowly speaking into the  
4 microphone one at a time. Yeah, I don't think I have  
5 any other announcements. Mr. Clizer, go ahead.

6 MR. CLIZER: Thank you very much. I do  
7 wish to apologize to the Commission, I apparently did  
8 not think that all of the way through, I will proceed  
9 continuing though.

10 Q. (By Mr. Clizer.) Let's start, first simple  
11 question, David Duncan in orange, fits perfectly into  
12 that one box; correct?

13 A. Sure, I could see that. This has nothing  
14 to do with how we operate systems, nor does it account  
15 for all of the people working on our systems.

16 Q. Right. And all of that is premised on the  
17 idea that there were more people on the list when we  
18 asked for all staff --

19 A. But we did give you clarification for the  
20 DR and then we had -- we had it to you, so --

21 Q. That was the DR response though.

22 JUDGE HATCHER: Mr. Clizer, and Mr. Cox, we  
23 have a process to take care of discovery disputes, and  
24 this is not it, please continue.

25 MR. CLIZER: Your Honor, if I would, I

1 didn't know that I had a discovery dispute, I thought  
2 I had an answer, but I will proceed, I apologize.

3 Q. (By Mr. Clizer.) Jamie Davidson, which I  
4 have highlighted in blue, fits entirely within that  
5 square but for those two down there, would you agree  
6 with me on that?

7 A. I see your blue pins.

8 MR. WOODSMALL: Your Honor, I believe there  
9 needs to be some foundation here. For instance, can  
10 you verify this map, can you tell me who is which  
11 color, I mean, we're just pointing at colors on a map.

12 JUDGE HATCHER: Let's -- well taken.

13 MR. CLIZER: The implicit problem was that  
14 me putting the colors on was going to be the building  
15 of the foundation by cross-referencing it against the  
16 Excel spreadsheet.

17 JUDGE HATCHER: I understand. If you would  
18 prefer, I can ask Mr. Cox, but I would expect the  
19 questions to be very direct, "The yellow ones  
20 represent this employee, do you agree," but that is  
21 just me. Mr. Clizer, go ahead.

22 Q. (By Mr. Clizer.) Well, if you'll take a  
23 look at this Excel spreadsheet, you would agree with  
24 me that Chris Wallen is listed as the chief operator  
25 for all of the systems in that second block beginning

1 with Missouri Utilities through Wilmar Estates?

2 A. He's listed as the chief operator; correct,  
3 and there is multiple other operators listed after  
4 him.

5 Q. And if you would cross-reference that to  
6 what Dr. Marke has broken-out as the divisions, you  
7 would agree with me that all of those systems are  
8 these two boxes; correct?

9 MR. WOODSMALL: Your Honor, and again, how  
10 is the record going to reflect Mr. Clizer pointing at  
11 an exhibit --

12 MR. CLIZER: You're right.

13 MR. WOODSMALL: -- with two fingers?

14 MR. CLIZER: He has a good point, let me  
15 back that up, I apologize.

16 MR. WOODSMALL: This entire line of  
17 cross-examination is a train wreck. This shows how  
18 half-baked Dr. Marke's proposal --

19 JUDGE HATCHER: Thank you, Mr. Woodsmall,  
20 that is an excellent critique, we're not taking  
21 critiques at this time though.

22 I'm going to number your boxes for you,  
23 Mr. Clizer, I'm going to take over the questioning for  
24 a few minutes. The boxes are in the State of  
25 Missouri --

1 MR. CLIZER: The divisions are already  
2 numbered in Dr. Marke's testimony, I will just refer  
3 to the divisions in the testimony.

4 JUDGE HATCHER: Excellent.

5 MR. CLIZER: I apologize.

6 JUDGE HATCHER: Sold.

7 Q. (By Mr. Clizer.) So those were divisions 1  
8 and 2 in Dr. Marke's testimony, which is the next  
9 page.

10 A. Page 11?

11 Q. Well, it's page 11 of the testimony, the  
12 second or third page of the handout. If we  
13 cross-reference that, we can see Chris Wallen serves  
14 all of those systems and just those systems; correct?

15 A. He is listed as chief operator of those;  
16 correct.

17 Q. Correct. And you would agree with me that  
18 but for those two systems --

19 MR. WOODSMALL: Again, Your Honor --

20 MR. CLIZER: Sorry.

21 MR. WOODSMALL: -- "but for those two" --

22 Q. (By Mr. Clizer.) But for the Spring Branch  
23 and Missing Well systems, which were in number 3 of  
24 Dr. Marke's breakout in his testimony, all of those  
25 operations are in division 2 of Dr. Marke's testimony?



1 A. What was the question?

2 Q. If we were to cross-reference the Excel  
3 spreadsheet --

4 A. Okay.

5 Q. You know what, I'm going to actually do  
6 most of this in my briefing, I'm just going to cut  
7 this short, this hardly is not working, let's just ask  
8 some rather simple questions.

9 Brady Graves, Brady Graves operators the  
10 majority, the bench is absolutely correct not all, but  
11 the majority, he holds the chief operating position  
12 for all of those systems in that first block, it --  
13 not all of those systems, for the majority of the  
14 systems in that first block on the Excel spreadsheet,  
15 would you agree with that?

16 A. Yes.

17 Q. And I'm just going to pinpoint a few so  
18 that we can place them on the map. Branson Cedars,  
19 you would agree with me that he operates Branson  
20 Cedars which is fourth down from the top?

21 MR. WOODSMALL: Your Honor, I believe  
22 that's -- Branson Cedars shows James Crawford as the  
23 chief operator.

24 Q. (By Mr. Clizer.) Sorry, he's listed as an  
25 "other employee" in Branson Cedars?

1 A. Correct.

2 Q. And Branson Cedars is teeny down here?

3 A. Correct.

4 Q. And you would agree with me that he is  
5 listed as the operator for Stu- -- Freeman Hills,  
6 which is one, two, three, four, five, six, seven,  
7 eight, nine, ten down?

8 A. Yes.

9 Q. And Freeman Hills, where is that? That  
10 would be up here, would it not?

11 MR. WOODSMALL: Your Honor.

12 Q. (By Mr. Clizer.) Sorry, that would be in  
13 box number 6 -- sorry, division number 6 from  
14 Dr. Marke's testimony?

15 A. Sure. I think you're getting misunder- --  
16 you're misunderstanding a chief operator versus a  
17 normal operator, I think that's where you're getting  
18 confused on this.

19 Q. All right. Enlighten me.

20 A. A chief operator, so Brady in particular, I  
21 know Brady, Brady is a technical expert, so he is a --  
22 he is, you know, one of the top operators over there,  
23 he manages a bunch of other personnel, he is the guy  
24 -- because these systems we buy are completely  
25 dilapidated, which is one of the reasons why we --

1 Mr. Marke's thing made no sense to us, we buy Missing  
2 Well, we buy Freeman Hills, Freeman Hills has failed  
3 wells, failed electrical, the -- you know, the system  
4 is on its last leg, we have to continue to provide  
5 service until such a time we get all of the  
6 engineering done, permitting to do new construction,  
7 so a guy like Brady goes in and says, Hey,  
8 electricians, we need you to do this rewiring, we need  
9 you to watch these pumps, we need you to do all of  
10 this triage work, and ongoing inspection work, in  
11 order to keep this thing running until the new thing  
12 is going to go into -- new improvements get built. So  
13 he is managing a number of systems because he is a  
14 technical expert that can direct all of our trades  
15 skill people to watch individual components until such  
16 time we get new improvements done.

17 Q. Okay. So that -- so he's a manager? He's  
18 managing on top of everybody else?

19 A. Managing and operating at the same time,  
20 riding boss.

21 Q. Is he going to each of these systems?

22 A. He goes to some systems, it depends on the  
23 week.

24 Q. I don't understand how he's able to do that  
25 given the amount of time that you say it takes to

1 visit each system and the number of systems he's on --

2 MR. WOODSMALL: Your Honor --

3 Q. -- can you please explain that to me?

4 MR. WOODSMALL: -- there is no question  
5 there.

6 Q. (By Mr. Clizer.) I asked, can you please  
7 explain that to me?

8 A. Yes, it's -- that's why there is more than  
9 one operator listed on each one of these systems,  
10 because you have to trade people back and forth.

11 Q. Do you know where Brady Graves lives? You  
12 said you know him.

13 A. I think he lives in Lincoln County.

14 Q. So he's up here?

15 A. Correct.

16 Q. Victor Wright, do you know Victor Wright?

17 A. I do not.

18 REPORTER LEWIS: Hi, can you hear me okay?

19 JUDGE HATCHER: Yes. Is this our court  
20 reporter?

21 REPORTER LEWIS: Yeah. Yes, I really  
22 apologize, I don't know what happened with my  
23 computer, I could not click on any links or anything.

24 JUDGE HATCHER: Not a problem, totally  
25 understandable, we'll let you go ahead and get setup,

1 we'll continue here, and I -- my understanding is that  
2 you'll then play the recording back and transcribe the  
3 rest at a different time.

4 REPORTER LEWIS: Yeah, I --

5 JUDGE HATCHER: Okay. Let's go ahead  
6 and --

7 REPORTER LEWIS: I'm sorry, did you guys  
8 start already? Or I don't know what's -- I have --

9 JUDGE HATCHER: Yes, ma'am.

10 REPORTER LEWIS: I don't know what's going  
11 on.

12 JUDGE HATCHER: We started at 9:00 a.m.

13 REPORTER LEWIS: Oh.

14 JUDGE HATCHER: And we will be continuing.  
15 But we started at 9:00, there are at least two  
16 recordings made, and our office spoke with your  
17 service and they will be either transcribing that, or  
18 sending a reporter, which I believe is you, to  
19 continue transcribing the remainder of the hearing,  
20 and then go back and finish the recording.

21 REPORTER LEWIS: Okay. Can I just -- can I  
22 get your name? I'm not sure who anybody is, so --

23 JUDGE HATCHER: Sure, not a problem. My  
24 name is Charles Hatcher, I am the Presiding Judge.  
25 And asking the questions is...

1 MR. CLIZER: John Clizer, on behalf of the  
2 Missouri Office of Public Counsel, last name  
3 C-L-I-Z-E-R.

4 JUDGE HATCHER: And our witness in the  
5 witness box right now is.

6 MR. COX: Josiah Cox, J-O-S-I-A-H, C-O-X.

7 JUDGE HATCHER: Okay. Thank you. We will  
8 fill in names as we go along. Mr. Clizer, we're at  
9 your question, which --

10 MR. WOODSMALL: The last question was  
11 Victor Wright, I believe.

12 JUDGE HATCHER: No, we had -- does he know  
13 Victor Wright, and then it was -- how does all of that  
14 matter, how does -- I forgot, go ahead, I'm sorry.

15 MR. CLIZER: I'll continue with the  
16 questioning if you are -- Okay.

17 Q. (By Mr. Clizer.) So if you look at this  
18 certified operator list, would you agree with me that  
19 it says Victor Wright lives in Pike County?

20 A. I don't know if that's where he lives, but  
21 it's where it says on the operator sheet.

22 Q. And you have no reason to doubt that at  
23 this stage, do you?

24 A. I have no idea.

25 Q. All right. Let's just talk about system 3,

1 this was the one that you focused on your testimony;  
2 correct?

3 A. Correct.

4 Q. And by system 3, I mean specifically  
5 division 3 in Dr. Marke's testimony; is that correct?

6 A. Yes.

7 Q. Now if you examine the Excel spreadsheet,  
8 those systems are primarily, but for Spring Branch and  
9 Missing Well, the systems in the fourth box down where  
10 James Crawford is listed as the chief operator, can  
11 you cross-reference those very quickly with what's in  
12 Dr. Marke's testimony?

13 A. Yeah, since it's not listed here, I'm just  
14 asking, the second box on the spreadsheet --

15 Q. Sorry.

16 A. -- the second grouping between the space  
17 right there, the second grouping, starts with  
18 "Missouri Utilities"?

19 Q. No, first -- two more down, Cedar Glen.

20 A. Cedar Glen. Okay. So that's the box  
21 you're -- that's the box?

22 Q. Yeah. If we can cross-reference that group  
23 with what's in Dr. Marke's testimony as division 3?

24 A. Okay. And can you point to me which box is  
25 division 3?

1 Q. (Pointing.)

2 A. Thank you.

3 MR. CLIZER: And for the record I pointed  
4 to the box containing the county of Camden. I don't  
5 know a better way to do that.

6 Q. (By Mr. Clizer.) Would you agree with me  
7 that those are the systems we're discussing when we  
8 talk about Dr. Marke's division 3?

9 A. I don't have Dr. Marke's -- I see this -- I  
10 see this is what you're talking about.

11 Q. Can you flip the Excel spreadsheet over to  
12 Dr. Marke's testimony?

13 A. There, I see it.

14 Q. And you would agree with me that those are  
15 the systems that make up division 3?

16 A. Yes.

17 Q. And that was the division you referenced in  
18 your testimony?

19 A. Yes, I believe that's true, I can -- let me  
20 double-check my testimony. Can you point in my  
21 testimony where that is?

22 Q. Absolutely. Page number 34, lines 8  
23 through 17, of your surrebuttal testimony.

24 A. Give me that page again one more time,  
25 please.



1 Q. Thirty-four of your surrebuttal testimony.

2 A. All right. I have page 34 pulled up.

3 Q. Actually, let's start with, you previously  
4 testified that you're checking these systems five  
5 times a week for water systems; correct?

6 A. That is correct.

7 Q. Cimmaron Bay would be one of the systems  
8 included in that category, would it not?

9 A. If Cimmaron Bay is a water system -- the  
10 water system is Cimmaron Bay; that's correct. I can't  
11 remember if there is a chlorine analyzer there or not,  
12 but that seems correct to me.

13 MR. CLIZER: I'd like to mark an exhibit,  
14 No. 234.

15 JUDGE HATCHER: So marked.

16 Q. (By Mr. Clizer.) Mr. Cox, you would agree  
17 with me that this is a data response request provided  
18 to OPC by Confluence Rivers?

19 A. Correct.

20 Q. And in this data response the OPC requested  
21 how Confluence checks the number of visits to its  
22 systems?

23 A. Correct. For operations maintenance, yes.

24 Q. And turning to the second page, the Excel  
25 spreadsheet shows the facility checks for Cimmaron

1 Bay?

2 A. Yeah, these are the work orders that are  
3 pulled for the maintenance checks; correct.

4 Q. And it shows on the right-hand side for the  
5 water system, checked about once a week, yeah,  
6 slightly less?

7 A. It's missing a water testing that has  
8 happened every day, this is just the inspection, which  
9 is different than the water testing.

10 Q. So what you're telling me is that when the  
11 OPC asked you how you verified site visits, you only  
12 verified certain site visits?

13 A. We verified the site visits going on with  
14 operations and maintenance, not routine testing. It's  
15 a technical question, we're giving you a technical  
16 answer.

17 Q. So you don't verify your testing visits?

18 A. We get the testing results.

19 Q. And those testing results wouldn't be a  
20 verification of the visits?

21 A. No, that's separate than the visits, those  
22 are different work orders.

23 Q. All right. Just a couple of things, really  
24 quick. Mr. Cox, you reference OSHA visits -- or OSHA  
25 requirements on pages 36 and 37; correct?

1 A. Correct.

2 MR. CLIZER: I'll mark another exhibit,  
3 235.

4 JUDGE HATCHER: So marked.

5 Q. (By Mr. Clizer.) This is a data response  
6 request provided to the OPC from Confluence Rivers;  
7 correct?

8 A. Correct.

9 Q. And in that we asked you to identify a  
10 number of subpoints; correct?

11 A. Correct.

12 MR. CLIZER: I'll mark another exhibit.

13 MR. WOODSMALL: Your Honor, Exhibit 235 is  
14 not complete, it specifically refers to an asset  
15 listed isn't attached.

16 MR. CLIZER: If Your Honor would like, I  
17 can provide it; however, I will explain very shortly  
18 why that is irrelevant for the purposes of which I'm  
19 introducing it.

20 JUDGE HATCHER: I will give you that  
21 opportunity, let's see where Mr. Clizer lands.

22 And the next exhibit, 236, so marked.  
23 Mr. Clizer, are we getting close?

24 MR. CLIZER: I'm speeding things up.

25 Q. (By Mr. Clizer.) This is another DR

1 response provided to the OPC by Confluence Rivers?

2 A. Is that a question?

3 Q. Correct?

4 A. Correct.

5 Q. And in this one we requested of you  
6 information related to the sub-bullet points in 0242;  
7 correct?

8 A. Correct.

9 Q. To clarify, I only wanted to introduce 0242  
10 to establish the bullet points I intend to brief on  
11 0243, if the Commission would prefer the Excel file in  
12 0242, I am happy to provide it.

13 JUDGE HATCHER: I may have missed it, would  
14 you just give me the underlying of the -- what was the  
15 point of these?

16 MR. CLIZER: Sure enough, at this stage I  
17 was just introducing things to get into my brief. The  
18 OSHA requirements cited to by Mr. Cox refers to  
19 enclosed spaces, which the OSHA regulations that he  
20 includes in testimony have listed as specific examples  
21 of 0242 is a recitation of the list primarily, with a  
22 couple of exceptions, of the items in those OSHA  
23 regulations, and 0243 specifically says that the  
24 company does not enter those on an inspection basis  
25 and only on an as-needed basis. Does that clarify?

1 JUDGE HATCHER: Yes. Thank you.

2 MR. CLIZER: Thank you very much.

3 JUDGE HATCHER: And did you move for the  
4 admission?

5 MR. CLIZER: I was going to move for the  
6 admission of all of the exhibits at the end.

7 JUDGE HATCHER: Oh, at the end. Gotcha.

8 MR. CLIZER: I'm just -- you know what, I'm  
9 going to be very frank with you, this has gone south,  
10 I am just going to run through the exhibits I'd like  
11 to be able to cite to in my brief as quickly as  
12 possible, so I am going to proceed as fast as I can.

13 JUDGE HATCHER: Can you let me ask a  
14 question first? Are these to be cited in relation to  
15 this topic?

16 MR. CLIZER: Absolutely.

17 JUDGE HATCHER: Okay. Go ahead.

18 MR. CLIZER: And if the bench would so  
19 request, I can specifically establish the rationale  
20 behind each as I do so, or if I can just reduce the  
21 time necessary, I'll just lay the foundation.

22 MR. WOODSMALL: We have no objection, Your  
23 Honor.

24 JUDGE HATCHER: Great. Thank you,  
25 Mr. Woodsmall.

1 MR. CLIZER: I'll mark another exhibit.  
2 I'm sorry, I didn't know that you weren't finished.

3 JUDGE HATCHER: How many do you have?

4 MR. CLIZER: I'm not sure if I can count.  
5 Not a whole lot more I hope. Your Honor, I think I  
6 can lay the foundation relatively quickly.

7 JUDGE HATCHER: I believe I have a "no  
8 objection" in my pocket, so I would rather not have a  
9 foundation, I would rather us figure out if we admit  
10 those right now --

11 MR. CLIZER: Oh, okay.

12 JUDGE HATCHER: -- or if we admit those at  
13 the end of the evidentiary hearing when we're going to  
14 enter in all of the prefiled testimony that has not  
15 yet been entered. Are you going to ask Mr. Cox any  
16 questions about any of that other than foundational in  
17 order to get them admitted?

18 MR. CLIZER: Give me one minute --

19 JUDGE HATCHER: Okay.

20 MR. CLIZER: -- I will try and determine  
21 that.

22 JUDGE HATCHER: Okay.

23 MR. WOODSMALL: Just to be clear, Your  
24 Honor, if they're DR responses, we have no objection  
25 to those (inaudible.)

1 JUDGE HATCHER: Mr. -- oh, I see the  
2 problem though, if I give him just one exhibit number,  
3 that makes it really easy on me, and that would make  
4 it really difficult on him to cite in his brief, that  
5 makes me inclined just to take this up at the end,  
6 maybe if we extend naturally through lunch, and  
7 Mr. Clizer or his staff can get those marked, we'll do  
8 them then. Just -- And I know he's listening, but  
9 I'll direct my comments to Mr. Woodsmall, because  
10 we're still talking, I think what the Commission would  
11 be most interested in -- given the witnesses for  
12 public counsel's proposal, and the witness for  
13 Confluence, in matching up these two viewpoints and  
14 comparing them more directly.

15 MR. CLIZER: I'm not sure I followed that,  
16 I'm sorry, what are you proposing?

17 JUDGE HATCHER: Are we at the heart of your  
18 questioning now?

19 MR. CLIZER: All I'm doing now is  
20 introducing a handful of exhibits. I can literally  
21 just cite what they are, and move for the admission,  
22 and if there is no objection, we can proceed from  
23 there, that would be the best.

24 JUDGE HATCHER: We are definitely doing  
25 that, but I don't know if we're going to do that right

1 now, how many do you have? Six, eight, ten, somewhere  
2 in there?

3 MR. CLIZER: Yeah, let's talk about that.

4 JUDGE HATCHER: Do you have any further  
5 questions for Mr. Cox?

6 MR. CLIZER: Give me one minute to confer.

7 JUDGE HATCHER: Let's do them now.

8 MR. CLIZER: I do not have any further  
9 questions.

10 JUDGE HATCHER: Okay. I have listed  
11 exhibits numbers starting at 237 is your next one,  
12 what I would like you to do, Mr. Clizer, is to read me  
13 the number of the DR Exhibit 237.

14 MR. CLIZER: Your Honor, OPC DR 2039.

15 JUDGE HATCHER: 238.

16 MR. CLIZER: Staff DR 0040 -- 401. Sorry,  
17 that is again 00401.

18 JUDGE HATCHER: 239.

19 MR. CLIZER: Staff DR 0037.

20 JUDGE HATCHER: Exhibit No. 240.

21 MR. CLIZER: Staff DR 0075.1.

22 JUDGE HATCHER: Exhibit No. 241.

23 MR. CLIZER: Staff DR 0081.

24 JUDGE HATCHER: Exhibit No. 242.

25 MR. CLIZER: OPC DR 2035.



1 JUDGE HATCHER: Exhibit No. 243.

2 MR. CLIZER: OPC DR 2037.

3 JUDGE HATCHER: 244.

4 MR. CLIZER: OPC DR 2036.

5 JUDGE HATCHER: 245.

6 MR. CLIZER: I believe that has reached the  
7 end of my list.

8 JUDGE HATCHER: Okay. I'm going to repeat  
9 back the list that we just started with DR 00401,  
10 that's 238. Exhibit 239 is DR 0037. Exhibit 240 is  
11 DR 0075.1. 241 is DR 0081. 242 is DR 2035. 243 is  
12 DR 2037. And DR 244 -- Exhibit 244 is DR 2036.

13 MR. CLIZER: Did you have 2039 as  
14 Exhibit No. 237?

15 JUDGE HATCHER: Yes. And Exhibit 237 is DR  
16 2039. Thank you. I was unsure where we started. I'm  
17 going to take that batch out of order only because I  
18 have that nonobjection in my pocket. Are there any  
19 objections to the admission of Exhibits 236 -- 237  
20 through 234? I'm not going to read those again.

21 MR. WOODSMALL: Judge, that was through  
22 244?

23 JUDGE HATCHER: 244. Thank you, sir.  
24 Hearing no objections, those are admitted.

25 MR. CLIZER: In that case I'll move for the

1 admission of Exhibits 231 through 236. And I can do  
2 those individually if you would prefer?

3 JUDGE HATCHER: Nope.

4 MR. WOODSMALL: Your Honor, the only one  
5 that I have problems with, most of those are DR  
6 responses, certainly no objection, there is another  
7 document, I have it labeled as 232, it says,  
8 "Certified operator, Victor Wright," my objection,  
9 lack of foundation. That's it, Your Honor.

10 MR. CLIZER: Now, again I can  
11 cross-reference the certification numbers on the Excel  
12 spreadsheet with the Missouri Department of Natural  
13 Resources website, that is my foundation, and that's  
14 it in its entirety.

15 JUDGE HATCHER: The problem, Mr. Clizer, is  
16 you produced it.

17 MR. CLIZER: I understand.

18 JUDGE HATCHER: You're the lawyer in the  
19 case.

20 MR. CLIZER: I understand.

21 MR. WOODSMALL: And that's my point, Your  
22 Honor, he is claiming, but there is no one here as a  
23 witness to lay this foundation.

24 MR. CLIZER: The only way that you could  
25 lay the foundation would be to go through the document

1 and insert the numbers into the DNR website which we  
2 can manually do.

3 MR. WOODSMALL: There still has to be a  
4 witness.

5 MR. CLIZER: I can cross, Mr. Cox, if you  
6 want to go through all of the names on that list, put  
7 them into the website, and show that that's the  
8 response that gets kicked back.

9 MR. WOODSMALL: Your Honor, I'll drop my  
10 objection, let's --

11 JUDGE HATCHER: Thank you, Mr. Woodsmall.

12 MR. WOODSMALL: You're welcome.

13 JUDGE HATCHER: So admitted. And I am  
14 admitting -- we started with 231?

15 MR. CLIZER: I believe so.

16 JUDGE HATCHER: Okay. Admitting all of the  
17 exhibits proposed by OPC, that is Exhibit 231, 232  
18 which -- I'm sorry, 231 and the remainder down to 236  
19 are all DRs, those are admitted with Mr. Woodsmall's  
20 blessing. The certified operators is the one we were  
21 discussing, that's Exhibit 232, Mr. Woodsmall withdrew  
22 his objection, and we will go ahead and admit that.

23 Mr. Woodsmall, just a gentle reminder on  
24 the microphone. Thank you, sir.

25 You had no more questions for Mr. Cox, that

1 takes us to commissioner questions pending any input  
2 from counsel.

3 MR. PRINGLE: Yeah, before we do that,  
4 Judge, could someone take this down --

5 JUDGE HATCHER: Yeah.

6 MR. PRINGLE: -- because it's definitely  
7 going to fall the minute I let go of it.

8 JUDGE HATCHER: Yes. Thank you.

9 REPORTER LEWIS: Can I ask who that last  
10 speaker was? I'm sorry, I can't see who all is  
11 speaking all of the time.

12 MR. PRINGLE: That was Travis Pringle for  
13 staff counsel.

14 REPORTER LEWIS: Thank you.

15 JUDGE HATCHER: Our mistake. Thank you,  
16 Madam Court Reporter.

17 REPORTER LEWIS: Thank you. I appreciate  
18 that.

19 JUDGE HATCHER: We have commissioner  
20 questions, are there any commissioner questions?  
21 Commissioner Hahn. Oh, Commissioner -- Commissioner  
22 Kayla Hahn, last name is spelled H-A-H-N. Go ahead.

23 COMMISSIONER HAHN: Thank you. Mr. Cox, in  
24 the public stakeholder meetings there was significant  
25 discussion or concern about boil advisories, so I just

1 have a few questions relating to boil advisories. Who  
2 makes the decision that the boil advisory is needed,  
3 is that Confluence, or O&M, or can you just describe  
4 that process?

5 MR. COX: Yeah, absolutely. So we have a  
6 whole -- in fact, DNR governs this, so there are a  
7 whole set of circumstances that require a boil water  
8 advisory, those are such as pressure loss, you know,  
9 service outage, we're doing routine maintenance that  
10 requires the shutting down of part of the system, any  
11 time that either the pressure has gone down in such a  
12 way that you've not maintained 21 PSI, which is the  
13 minimum pressure that DNR requires, because that keeps  
14 any kind of foreign material from getting into the  
15 water lines, or if there is an event where, you know,  
16 we had a pump fail on a chemical dispenser that now we  
17 have to go replace it, that means there wasn't  
18 adequate chlorination in the system, those are the  
19 kind of things that trigger a boil water advisory.

20 COMMISSIONER HAHN: And then who at the  
21 company makes that decision or is it a contractor?

22 MR. COX: That's by a DNR mandate, we have  
23 a list for our contractors, so when any one of these  
24 situations happens that automatically triggers a boil  
25 water advisory.

1 COMMISSIONER HAHN: Okay. Who is  
2 responsible for notifying the public or the customers  
3 of the advisories?

4 MR. COX: We -- so the O&M contractor kicks  
5 it out, and then we kick out the advisory, both our  
6 customer service center; right, so the call center  
7 itself, and then we update -- we've got websites, we  
8 usual social media as well, so we're trying to use  
9 every medium we can to get to our customers.

10 COMMISSIONER HAHN: Okay. So just to be  
11 clear, the contractor notifies the customer or they  
12 notify you?

13 MR. COX: They notify us.

14 COMMISSIONER HAHN: Okay. And then you,  
15 through the customer service center, notify the  
16 customer?

17 MR. COX: That is correct.

18 COMMISSIONER HAHN: And what mediums -- so  
19 you said social media, do you text, or --

20 MR. COX: So --

21 COMMISSIONER HAHN: -- email, or both?

22 MR. COX: -- we email, so it's all  
23 voluntary for whatever customer information they give  
24 to us, so in fact we can't even harvest numbers from  
25 the call center, you have to voluntarily give us your

1 phone number. So we do not text yet, because we have  
2 not got enough mobile numbers to make that, you know,  
3 something that we can send out. So emails given to  
4 us, we do all social media, and we put signs in the  
5 neighborhood. And we try to be specific, especially  
6 systems we've owned for a while like Indian Hills,  
7 we've zoned those systems, so oftentimes we do a  
8 localized boil water notice instead of a system-wide  
9 boil water notice.

10 COMMISSIONER HAHN: Okay. Is anyone at  
11 Confluence or CSWR specifically in your executive  
12 staff notified of any boil advisories or -- every time  
13 or can you describe that?

14 MR. COX: Yeah, every time. In fact, we go  
15 through on a weekly basis every boil advisory that's  
16 happened across the entire, you know, 11-state  
17 footprint, and we go so far as to do a root cause  
18 analysis, Hey, what happened? Was it a planned event,  
19 was it a nonplanned event? How long did we stay on a  
20 boil water advisory? How quickly were the tests  
21 turned around? Because the boil water advisory is  
22 lifted by submitting tests to the state that show that  
23 the minimum chlorine levels are still -- are in the  
24 water, and it's pressurized, that's how you're able to  
25 lift those boil water advisories.

1 COMMISSIONER HAHN: Okay. That's really  
2 helpful. I think that concludes my questions. Thank  
3 you.

4 JUDGE HATCHER: Commissioner Glen  
5 Kolkmeier. The last name is spelled  
6 K-O-L-K-M-E-Y-E-R. Commissioner.

7 COMMISSIONER KOLKMEYER: Thank you, Judge.  
8 Good morning.

9 MR. COX: Good morning, sir.

10 COMMISSIONER KOLKMEYER: When you purchased  
11 these systems in Missouri, did they all pass DNR  
12 regulations for safe water and safe wastewater?

13 MR. COX: Most none of them did.

14 COMMISSIONER KOLKMEYER: Okay.

15 MR. COX: In fact, we only bought one water  
16 and wastewater system that was compliant of the 70 we  
17 own in the state.

18 COMMISSIONER KOLKMEYER: The 70?

19 MR. COX: Right.

20 COMMISSIONER KOLKMEYER: Only one?

21 MR. COX: Only one was passing when we  
22 bought it.

23 COMMISSIONER KOLKMEYER: Today do all of  
24 the systems that you own, the 70 systems, do they all  
25 pass DNR regulations with the current operational



1 contracts you have in place?

2 MR. COX: Yeah, all of the drinking water  
3 systems pass for human health and safety for sure.  
4 There are -- 50 of them are fully in compliance, the  
5 other are in process. So, for example, if a system  
6 doesn't have enough storage, ground storage, so we're  
7 still providing water of the existing system,  
8 chlorinating it, make sure it's safe for human use,  
9 but in an emergency situation DNR requires to have  
10 it's called 100,000 gallon tank, so those hundred --  
11 that 100,000 gallon tank may be in the process of  
12 being constructed right now, you know, those kind of  
13 things, but in terms of the water itself that's being  
14 delivered, it's 100 percent safe.

15 COMMISSIONER KOLKMEYER: Thank you. Thank  
16 you, Judge.

17 JUDGE HATCHER: Thank you. Are there any  
18 other --

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

21 JUDGE HATCHER: Yes, Commissioner Holsman,  
22 the last name is spelled H-O-L-S-M-A-N, and he is on  
23 Webex. Go ahead.

24 COMMISSIONER HOLSMAN: Thank you, Judge.  
25 The contracts that you enter into from here going

1 forward with any contractors, will they abide by the  
2 existing stipulation that will be put in place by this  
3 case? And if they are -- if that is not adhered to,  
4 what is a consequence?

5 MR. COX: Yeah, I -- thank you,  
6 Commissioner, that's a great question. This is one of  
7 those moments where I don't even understand how this  
8 works. So we have existing contracts with third-party  
9 operators operating the systems, which we've been  
10 doing for almost ten years here, and as you heard  
11 before, 35,000 tests, 30 exceedances, you know, and no  
12 letters of violation from DNR. So if somehow the  
13 Commission decided to deduct from my competitively-bid  
14 third-party operations maintenance firms, I'm still  
15 bound by those contracts. And regardless of how much  
16 I disagree with Mr. Marke's testimony in how you train  
17 operators, and how little there are, which I think  
18 it's all -- I mean, it didn't make any sense to us,  
19 but regardless of that, to train operators would cost  
20 money, we'd have to setup new operations, regardless  
21 who it is, I'd still be bound by my third-party  
22 contracts, so there will be some loss-making deal  
23 here; right? I don't get the revenue as part of the  
24 revenue requirement, I'm eating that, paying for  
25 hiring other operators, because I still have to

1 operate these things 365 days a year, 24 hours a day,  
2 so I -- that -- I don't even know how that would work  
3 for us, because we can't abide our competitively-bid  
4 contract, we can't shave down their costs, because  
5 they have a scoped service they bid.

6 COMMISSIONER HOLSMAN: Do you think there  
7 would be any rate payer savings if you had more of  
8 these FTEs inhouse?

9 MR. COX: No, it's the opposite. So the  
10 flexibility of having a third-party operations firm  
11 takes away from us trucks, tools, training,  
12 warehouses, all of that, and gives us a flexible  
13 workforce. You think in the same way when we buy a  
14 new system, so the day we buy a new system, instead of  
15 having to bring new personnel on staff, train them,  
16 equip them, do all of that, we get to turn on service  
17 the day we close, so the rate payer is not burdened  
18 with this all, training, equipping, all of that stuff,  
19 on top of everything else I just said. So, no, we're  
20 saving the rate payers considerably by the method we  
21 use. That's why we use it all over the country  
22 consistently, never had a state reject it across all  
23 11 states we work in.

24 COMMISSIONER HOLSMAN: Okay. Thank you.  
25 That's my questions, Judge.

1 JUDGE HATCHER: Thank you, Commissioner.  
2 Are there any other commissioner questions? And just  
3 to restate for the record, we have four of our five  
4 commissioners here, we have Chairman Scott Rupp on  
5 Webex, Commissioner Jason Holsman on Webex you just  
6 heard from, Commissioner Glen Kolkmeyer here in the  
7 courtroom, and Commissioner Kayla Hahn also here in  
8 the courtroom, and Commissioner Coleman may be  
9 listening, she is getting well after her knee surgery.

10 Hearing no other commissioner questions,  
11 the bench has no questions, that takes us to recross.  
12 Mr. Pringle.

13 MR. PRINGLE: For the record, Judge, Travis  
14 Pringle, Staff Counsel, no further questions from  
15 staff.

16 JUDGE HATCHER: Thank you. And,  
17 Mr. Clizer?

18 MR. CLIZER: No questions. Thank you.

19 JUDGE HATCHER: Thank you, sir. And  
20 redirect?

21 MR. WOODSMALL: Thank you, Your Honor.  
22 Dave Woodsmall on behalf of Confluence Rivers. I'm  
23 going to be very brief.

24

25

REDIRECT-EXAMINATION

1 BY MR. WOODSMALL:

2 Q. You were asked a question by Commissioner  
3 Holsman about whether there would be savings if  
4 operations was internalized, if there was an  
5 opportunity for such savings, would you pursue those,  
6 and why?

7 MR. COX: Yeah, absolutely, we're  
8 constantly wanting to cut operational costs. So think  
9 on an operational basis we receive dollar for dollar  
10 our cost, there is no profit to the company, every  
11 dollar of the expense that we cut out we can invest \$8  
12 for the same net rate impact for customers, so as a  
13 company we're incentivized to cut cost, so any chance  
14 we can due to operational efficiency, we're looking  
15 for that, because that's our opportunity to earn  
16 without impacting customers.

17 Q. You were shown Exhibit 235, and I don't  
18 need you to find it, I'll just tell you it's a data  
19 request response that lists a number of confined  
20 spaces on OSHA, do you recall that in your head, lift  
21 stations, and -- can you give me some type of rough  
22 numbers about how many of those type of confined  
23 spaces we have in Missouri?

24 A. I mean, we have hundreds, it's not just the  
25 70 systems that all have a corresponding confined

1 space, but it is lift stations inside the individual  
2 systems, and then it's manholes also inside the  
3 individual systems, so probably -- it may be closer to  
4 over a thousand.

5 Q. And while those might not need daily  
6 inspections, they need regular inspections; is that  
7 true?

8 A. That's true. And they need regular  
9 maintenance just because of the condition of systems  
10 we buy, they're deteriorated, we can't fix everything  
11 all at once, we focus on compliance because the  
12 capital cost would be cost-prohibitive from a rate  
13 standpoint.

14 Q. And each of those require at least one  
15 operator to enter?

16 A. That's correct; each of the combined spaces  
17 you have to have two people.

18 Q. Okay. And I'm finishing up. You were  
19 shown an easel with a number of pins on it, are you  
20 familiar with the still-to-be-submitted nonunanimous  
21 stipulation with staff that will call for a study  
22 going forward?

23 A. I am.

24 Q. And would you agree that the items -- the  
25 depiction of the system, and the number of operators

1 that was on the easel, would that be a consideration  
2 in that study?

3 A. Yes, we'll go a top-to-bottom study to  
4 explain where -- what is the best allocation of labor,  
5 how we could consolidate, that's all what we've agreed  
6 to do as part of the stipulation.

7 MR. WOODSMALL: No further questions, Your  
8 Honor.

9 JUDGE HATCHER: Thank you. Mr. Cox, you're  
10 excused. Confluence, go ahead and call your next  
11 witness.

12 MR. WOODSMALL: Your Honor, Confluence  
13 Rivers calls Todd Thomas.

14 JUDGE HATCHER: Mr. Thomas, thank you. Do  
15 you solemnly swear or affirm that the testimony you  
16 will give today will be the truth and the whole truth?

17 MR. THOMAS: I do.

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

20 MR. WOODSMALL: Thank you, Your Honor.

21 DIRECT-EXAMINATION

22 BY MR. WOODSMALL:

23 Q. Would you state your name for the record?

24 A. Todd Thomas.

25 Q. And by whom are you employed and in what

1 capacity?

2 A. Confluence Rivers, and I guess CSWR, LLC,  
3 in the capacity of vice-president.

4 Q. And did you cause to be filed in this case  
5 direct rebuttal and surrebuttal testimony?

6 A. Yes.

7 Q. And for the record I would note those have  
8 been premarked as Exhibits 20, 21, and 22. Do you  
9 have those in front of you?

10 A. I do.

11 Q. And do you have any changes to that  
12 testimony?

13 A. I do not.

14 Q. And if I were to ask you those same  
15 questions that appear therein today, would your  
16 answers be the same?

17 A. They would.

18 Q. And are those answers true and correct to  
19 the best of your knowledge?

20 A. Yes, they are.

21 MR. WOODSMALL: Your Honor, I would move  
22 for the admission of Exhibits 20, 21, and 22, and  
23 tender the witness for cross-examination.

24 JUDGE HATCHER: You've heard the motion by  
25 counsel, are there any objections? Hearing none, it



1 is so admitted. Again those numbers are Exhibit 20,  
2 21, and 22. Go ahead. He tendered his witness.  
3 Mr. Pringle, for staff.

4 MR. PRINGLE: No questions from staff,  
5 Judge. Thank you.

6 JUDGE HATCHER: Thank you. Mr. Clizer?

7 MR. CLIZER: No questions.

8 JUDGE HATCHER: Thank you. Are there any  
9 commissioner questions for Mr. Thomas?

10 COMMISSIONER HOLSMAN: No questions, Judge.

11 JUDGE HATCHER: Thank you. That was  
12 Commissioner Holsman. The bench has no questions.  
13 That takes us to redirect.

14 MR. WOODSMALL: No questions, Your Honor.

15 JUDGE HATCHER: Or, no -- Yeah. Thank you.  
16 You're dismissed, subject to recall.

17 MR. THOMAS: Thank you.

18 JUDGE HATCHER: Do you have another  
19 witness?

20 MR. WOODSMALL: Yeah, our final witness,  
21 Your Honor, Confluence Rivers calls Mr. Brent Thies.

22 JUDGE HATCHER: And as Mr. Thies makes his  
23 way to the stand, I'll remind all of our listeners he  
24 has already been sworn in, that is still applicable,  
25 so he will just go ahead and take a seat. And then

1 likely be immediately tendered for cross-examination,  
2 but that's just a guess.

3 MR. WOODSMALL: And just for the record,  
4 Your Honor, Mr. Thies's testimony has already been  
5 marked and accepted, it is Exhibit 17, which is a  
6 public and confidential version, Exhibit 18, and  
7 Exhibit 19. I tender the witness for  
8 cross-examination.

9 JUDGE HATCHER: Thank you. And I can  
10 confirm those numbers. Mr. Pringle, for staff,  
11 cross-examination?

12 MR. PRINGLE: No questions from staff,  
13 Judge. Thank you.

14 JUDGE HATCHER: Mr. Clizer for Office of  
15 the Public Counsel.

16 MR. CLIZER: Thank you.

17 CROSS-EXAMINATION

18 BY MR. CLIZER:

19 Q. Good morning, Mr. Thies.

20 A. Good morning.

21 Q. And again, I apologize, I -- for some  
22 reason I can't get it right in my head, Thies; right?

23 A. Yes.

24 Q. Okay.

25 A. Like the H isn't there.

1 Q. I apologize. Thies. Can you turn to your  
2 surrebuttal testimony specifically?

3 A. I am there.

4 Q. Specifically page four or starting on  
5 page four.

6 A. Yes, I'm there.

7 Q. And on page five you discuss Dr. Marke's  
8 use of the 2021 MERIC data, do you see that?

9 A. That's correct.

10 MR. CLIZER: I'm marking an exhibit,  
11 OPC 2045.

12 JUDGE HATCHER: So marked.

13 Q. (By Mr. Clizer.) Did you review the 2021  
14 MERIC data?

15 A. Excuse me?

16 Q. Did you review the 2021 MERIC data?

17 A. I did.

18 Q. Can you identify this document I've handed  
19 you?

20 A. It appears to be a 2022 Occupational  
21 Employment and Wage Statistics for Missouri, including  
22 various groups, with water and wastewater treatment  
23 plant operators on the bottom.

24 Q. Would you agree with me that this is the  
25 2022 version of the MERIC data provided?

1           A.    I don't see the word "MERIC" on here, and I  
2 accessed that online, so I'm not sure that I can  
3 confirm this is what it looks like printed out.

4           MR. CLIZER:  If you would like, Your Honor,  
5 allow me to mark another exhibit really quick?  My  
6 apologies.

7           JUDGE HATCHER:  Go ahead.

8           MR. CLIZER:  246.

9           JUDGE HATCHER:  Exhibit 246 so marked.

10          Q.    (By Mr. Clizer.)  Mr. Thies, would you  
11 agree with me that this is a printout of the MERIC's  
12 data information from MERIC's website?

13          A.    It is.

14          Q.    And would you agree with me that the  
15 information contained in this one matches what's in  
16 0245?

17          A.    That's correct.

18          Q.    Would you feel comfortable agreeing with me  
19 that 0245 is the 2020 MERIC data, 20- --

20          UNIDENTIFIED SPEAKER:  Your Honor, just for  
21 clarity, it's 2045.

22          MR. CLIZER:  OPC Exhibit 245.

23          JUDGE HATCHER:  Go ahead.

24          A.    Yes, this looks like from the MERIC  
25 website, yes.

1 MR. CLIZER: I'd move for the admission of  
2 OPC Exhibit 024 -- He's got me doing it now.  
3 OPC Exhibit 245. No, it would be the other one, that  
4 was 246.

5 JUDGE HATCHER: I know. I'd prefer to take  
6 them both, are you going to ask for 246 eventually?

7 MR. CLIZER: If you would prefer to take  
8 them both, can I just make 245 both? Or if you'd  
9 prefer I can make them 245 and 246.

10 JUDGE HATCHER: Okay.

11 MR. CLIZER: I'll move to admit them both.

12 JUDGE HATCHER: Nope, nope, we've already  
13 marked them. My question was do you want 246 in the  
14 record?

15 MR. CLIZER: I hadn't anticipated it, but  
16 if you would prefer it, I will be happy to move for  
17 both. Let me just move for both.

18 JUDGE HATCHER: Nope. 245. Are there any  
19 objections? Seeing no objections, 245 is admitted  
20 onto the hearing record.

21 MR. CLIZER: I'm marking 247.

22 JUDGE HATCHER: So marked.

23 Q. (By Mr. Clizer.) Mr. Thies, would you  
24 agree with me that this is the May 2020 State  
25 Occupational Employment and Wages Estimates for

1 Missouri compiled by the U.S. Bureau of Labor  
2 Statistics?

3 A. Yeah, I see Missouri now. Sorry, I didn't  
4 see it at first. Yes.

5 MR. CLIZER: I'd move for the admission of  
6 OPC Exhibit 247.

7 JUDGE HATCHER: Any objections? Hearing  
8 none, so admitted.

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

11 JUDGE HATCHER: Thank you. That will take  
12 us to commissioner questions.

13 COMMISSIONER KOLKMEYER: No questions,  
14 Judge.

15 JUDGE HATCHER: Thank you. And,  
16 Commissioner Hahn?

17 COMMISSIONER HAHN: Thank you, Judge. Just  
18 a couple of questions about these documents. I see  
19 the wage data, did you have any employment data on,  
20 like, relative unemployment levels for these  
21 occupations? Oh, I'm sorry, I guess I should ask OPC.  
22 Sorry. I should ask --

23 JUDGE HATCHER: Do you have a witness on  
24 this one? Yes, you have Dr. Marke, yes.

25 COMMISSIONER HAHN: Yeah. Okay. Sorry.

1 JUDGE HATCHER: Okay. The bench has no  
2 questions. And we go to redirect. Yeah.

3 MR. WOODSMALL: Very briefly, Your Honor.

4 REDIRECT-EXAMINATION

5 BY MR. WOODSMALL:

6 Q. Mr. Thies, do you believe that MERIC data  
7 is reflective of wages for this industry?

8 A. I do not. And we discussed that in  
9 testimony that it has limitations for certain.

10 Q. And what kind of limitations?

11 A. It is a selective reporting database  
12 primarily that, you know, folks opt-in, as we  
13 understand it, and so that means it may or may not be  
14 representative of all operators in the state or even a  
15 statistically significant sample.

16 MR. WOODSMALL: No further questions.  
17 Thank you.

18 JUDGE HATCHER: Thank you. Thank you,  
19 Mr. Thies, you're excused once again. And we --

20 MR. WOODSMALL: Your Honor, as I indicated,  
21 we're kind of hoping to get on the road, so if we can  
22 knock out another witness, all the better.

23 MR. CLIZER: This is a good breaking point.

24 REPORTER LEWIS: I'm having trouble hearing  
25 if anyone is speaking.

1 MR. CLIZER: I thought this was a good  
2 breaking point, that's all.

3 JUDGE HATCHER: No, let's continue on.  
4 Staff?

5 MR. PRINGLE: Yes, staff will call Curtis  
6 Gateley.

7 JUDGE HATCHER: You are correct, I forgot,  
8 and this was non-positional for informational purposes?

9 MR. PRINGLE: Correct; Judge. Our  
10 sub-issues have been resolved and staff have no issues  
11 on remaining sub-issue 17D.

12 MR. WOODSMALL: And, Your Honor, just for  
13 your clarity, but more importantly for the court  
14 reporter's clarity, as I indicated early today,  
15 Mr. Mitten will be taking over the rest of this issue,  
16 so the voice you hear, Madam Court Reporter, will be  
17 Russ Mitten.

18 REPORTER LEWIS: Thank you.

19 JUDGE HATCHER: Mr. Gateley has already  
20 been sworn in, I would just remind everyone that that  
21 is still applicable. Mr. Pringle, your witness.

22 MR. PRINGLE: Thank you, Judge.

23 DIRECT-EXAMINATION

24 BY MR. PRINGLE:

25 Q. Good morning. Yes, good morning,



1 Mr. Gateley.

2 A. Good morning.

3 Q. And for the court reporter, could you go  
4 ahead and state and spell your name for the record?

5 A. Curtis Gateley, C-U-R-T-I-S, G-A-T-E-L-E-Y.

6 Q. And by whom are you employed and in what  
7 capacity?

8 A. Public Service Commission Staff.

9 Q. And in what capacity are you employed with  
10 the staff?

11 A. I'm the manager of the water, sewer, and  
12 steam department.

13 Q. And did you cause to have prepared for  
14 these proceedings what has been premarked as Staff  
15 Exhibit 108, the direct testimony of Curt B. Gateley,  
16 and Staff Exhibit 126, the surrebuttal testimony of  
17 Curt B. Gateley?

18 A. Yes.

19 Q. Do you have any corrections to either of  
20 those exhibits at this time?

21 A. No.

22 Q. If I asked you the questions contained in  
23 those exhibits, would you respond or -- would you  
24 respond in substantially the same manner?

25 A. Yes.

1 Q. And are those responses true to the best of  
2 your knowledge and belief?

3 A. Yes.

4 Q. Thank you, Mr. Gateley.

5 MR. PRINGLE: At this time, Judge, staff is  
6 moving to admit Exhibits 108 and Exhibits -- where was  
7 that one?

8 JUDGE HATCHER: 126.

9 MR. PRINGLE: 126. Thank you, Judge.

10 JUDGE HATCHER: Are there any objections?

11 MR. MITTEN: No objection, Your Honor.

12 JUDGE HATCHER: No objections. Both are  
13 admitted, 108 and 126. Mr. Pringle.

14 MR. PRINGLE: And this I brought up earlier  
15 about the corrections to Mr. William's testimony, I  
16 can do this before submitting Mr. Gateley for cross,  
17 or do that after we wrap-up this issue.

18 JUDGE HATCHER: Let's do that after.

19 MR. PRINGLE: All right. Then at this time  
20 I tender the witness for cross-examination.

21 JUDGE HATCHER: And, Mr. Clizer.

22 MR. CLIZER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CLIZER:

25 Q. Good morning, Mr. Gateley.

1 A. Good morning.

2 Q. I'm going to hand you a copy of OPC's  
3 Exhibit -- apologies, OPC Exhibit 231. Take a moment  
4 and familiarize yourself with it.

5 A. I will say that my eyesight isn't great,  
6 this is a little hard for me to read, but I will do my  
7 best.

8 Q. Honestly, I might not have to ask you  
9 regarding the Excel spreadsheet.

10 A. Okay. I've read it.

11 Q. Would you agree with me that this data  
12 request, the front sheet of this, was requesting  
13 Confluence Rivers to update a prior staff data request  
14 to include all staff identified?

15 A. I don't have that level of familiarity with  
16 the previous DR, but, yes, it does say here that  
17 you're referencing a staff DR 0241 for the names of  
18 all staff and it says "not included in column D".

19 Q. Would you consider the people who perform  
20 chemical testings, plumbers, electricians, etc., that  
21 was referenced by Dr. -- by Mr. Cox to be staff?

22 A. My interpretation of this would be that  
23 subcontractors used for things like electrical work or  
24 plumbing would -- I would not include in the  
25 definition of staff. I would include certainly anyone

1 who is a part of true operations of the system, folks  
2 who collect samples, yes, certainly.

3 Q. So anyone involved in the true operation of  
4 the system would qualify as staff?

5 A. In the context of this DR I believe that  
6 would have been responsive, yes. The subcontractor  
7 folks, like an electrician, that might change every  
8 time, it depends on the work, but that kind of work is  
9 unusual.

10 Q. You made a recommendation in this case that  
11 there would be a Missouri specific employee dedicated  
12 to the operation of Missouri systems; is that right?

13 A. Dedicated to oversight of the operation  
14 certainly, but that dedicated Missouri employee could  
15 do quite a bit.

16 Q. So that dedicated Missouri employee could,  
17 for example, oversee other states potentially?

18 A. No.

19 Q. No?

20 A. The goal of it was to only be focused on  
21 Missouri, because my understanding right now that  
22 those folks are divided amongst other states as well  
23 as Missouri.

24 Q. You used to work at the Department of  
25 Natural Resources; correct?

1 A. Correct.

2 Q. How often does a water system need to be  
3 sampled and tested?

4 A. I believe that varies by the type of  
5 system, whether it's ground water/surface water, what  
6 kind of treatment is going into it, so I don't know  
7 for certain the minimum of the simplest ones.

8 Q. Would you expect that it needs to be tested  
9 five times a week?

10 MR. MITTEN: Your Honor, the witness  
11 already said he doesn't know.

12 MR. CLIZER: I believe the witness said he  
13 doesn't know the minimum.

14 MR. MITTEN: For the minimum size.

15 MR. CLIZER: Oh.

16 MR. MITTEN: And also has expressed his --

17 MR. CLIZER: I'll withdraw.

18 MR. MITTEN: Okay.

19 MR. CLIZER: I had misheard him then, I  
20 apologize.

21 Q. (By Mr. Clizer.) You put forward a  
22 recommendation in testimony, did you not, that the  
23 company needed to move towards inhouse contractors at  
24 some level; is that correct?

25 A. Yes.

1 Q. Do you believe that there are possible cost  
2 savings for moving towards inhouse contractors?

3 A. I believe that it's possible, I do not have  
4 -- I haven't conducted such a study.

5 Q. Turning back to that exhibit that I handed  
6 you before, can you flip through until you find the  
7 map of the State of Missouri? Yes, that would be the  
8 one. And actually you'll need the page before it just  
9 to make sure that we're referencing things correctly.

10 A. Okay.

11 Q. The box that Dr. Marke had labeled  
12 "Division 3."

13 A. Okay.

14 Q. Which I believe includes the county of  
15 Camden, can you find that box on the map?

16 A. Yes.

17 Q. Do you believe that it's fair and accurate  
18 to say that a person would need to drive up and down  
19 the length of the entire box in order to provide  
20 service to systems in that division?

21 A. If an operator was providing service to  
22 these systems, I would expect them to take a direct  
23 route amongst systems, but I would also expect that it  
24 depends on the frequency the DNR has prescribed for  
25 each one because you don't have to go to every system

1 every day.

2 Q. Do you believe that two certified operators  
3 would be able to oversee at least eight water and  
4 wastewater systems combined?

5 A. To conduct the minimum tasks of a normal  
6 operating, either wastewater or drinking water, then,  
7 yes, I believe that that's possible.

8 Q. Would a single operator be able to oversee  
9 eight systems and conduct the minimum tasks?

10 A. Depending on the challenges of the  
11 individual systems, I have seen operators take care of  
12 more than that, yes.

13 Q. Has to your knowledge the company produced  
14 a cost benefit analysis regarding moving in house  
15 operators?

16 A. To the best of my knowledge, no.

17 Q. Are you familiar with the Department of  
18 Natural Resources operator search database?

19 A. I am.

20 Q. Would you expect an operator who has a  
21 certification to appear in that database?

22 A. Yes.

23 Q. Would you expect that an operator -- would  
24 the failure to find an operator in that database lead  
25 you to believe that that operator did not have a

1 certification?

2 A. Generally speaking, yes, if I were dealing  
3 with a particular person who had represented  
4 themselves as an operator but didn't appear on the  
5 website, I -- personally I would follow-up with a  
6 phone call to make sure there wasn't some kind of  
7 error, but generally speaking we rely on that website.  
8 And it's put forth by DNR, the way it's presented is  
9 for folks to be able to find an operator, so they put  
10 it out there as a -- as these are the operators in the  
11 state.

12 Q. I am actually going to ask you really quick  
13 to review the Excel file.

14 A. Okay.

15 MR. MITTEN: Your Honor, for clarification,  
16 is that the Excel file that's part of Exhibit 231?

17 MR. CLIZER: It is.

18 REPORTER LEWIS: I'm sorry, who was that  
19 last speaker? I couldn't see.

20 MR. MITTEN: Russ Mitten.

21 REPORTER LEWIS: Thank you.

22 MR. CLIZER: And, Your Honor, I will say  
23 that I am only going to do one system, just one, I'm  
24 going to keep this as simple as possible.

25 Q. (By Mr. Clizer.) Can you find for me the



1 Clemstone -- Sorry. Yes, the Clemstone system? And I  
2 apologize, I would help to point out where it is, but  
3 I literally have given away my copy and I cannot look  
4 for it.

5 A. I do have it. I see it here.

6 Q. And would you agree with me that it lists  
7 Jeff Morris as one of the side operators?

8 A. The title of the column above where Jeff  
9 Morris appears says, "Other employees but not a  
10 complete list of staff," yes, I see his name  
11 associated with Clemstone.

12 Q. I'm going to hand you a copy of OPC's pre-  
13 -- OPC's admitted Exhibit 244. Have you read that,  
14 Mr. Gateley?

15 A. I have.

16 Q. Would you agree with me according to that  
17 data request Confluence holds Mr. Morris out to be an  
18 operator by listing him on that sheet?

19 A. According to this response, yes.

20 Q. I'm going to hand you a copy of OPC  
21 Exhibit 232. It's a list of certified operators, it  
22 appears to be printed from DNR's website, it's already  
23 been admitted, I'm asking you to find Mr. Morris.

24 A. I have found it.

25 Q. Does Mr. Morris have a wastewater

1 certification?

2 A. Not according to this document.

3 Q. And just to be clarified, Clemstone is a  
4 wastewater system according to the Excel file?

5 A. I don't specifically see on this that it's  
6 listed as a wastewater system, but it's among the  
7 Central Rivers system so, yeah, I believe that that is  
8 wastewater, yes.

9 Q. You believe that that's wastewater?

10 A. That -- it's my recollection that they were  
11 wastewater systems --

12 Q. Well --

13 A. -- but I would have to refresh my memory.

14 Q. -- let me help you with that, can you turn  
15 to Dr. Marke's excerpt of testimony that's included in  
16 the OPC exhibit?

17 A. Okay.

18 Q. And you would agree that under operator  
19 number one it lists Clemstone in Platt County under  
20 wastewater?

21 A. Yes, I agree.

22 MR. CLIZER: I'll mark an exhibit, Your  
23 Honor. 248.

24 JUDGE HATCHER: Thank you. So marked.

25 Q. (By Mr. Clizer.) Mr. Gateley, can you

1 identify this document?

2 A. This is Chapter 9 of the DNR Rules of Waste  
3 Water Treatment Plan Operators -- I'm sorry, Treatment  
4 Plant Operators.

5 Q. Can you turn to page four and turn -- as  
6 page marked by this document?

7 A. Okay.

8 Q. Would you agree with me that subsection C  
9 reads, "All operators of wastewater treatment systems  
10 included in subsection 2A of this rule shall possess  
11 as a minimum a level D certification of competency  
12 issued by the Department"? And I will not read the  
13 second sentence.

14 A. I agree that that's what this reg says,  
15 yes.

16 MR. CLIZER: Would Your Honor prefer for me  
17 to offer exhibit or should I just cite to it given  
18 that it's DCSR?

19 MR. MITTEN: Cite to it.

20 MR. CLIZER: I felt that was probably the  
21 case. In which case I will not move to exhibit --  
22 admit it and simply end my cross-examination. Thank  
23 you.

24 JUDGE HATCHER: Okay. That will take us to  
25 the company.

1 MR. MITTEN: Thank you, Your Honor. And  
2 for the court reporter my name is Russ Mitten,  
3 M-I-T-T-E-N.

4 CROSS-EXAMINATION

5 BY MR. MITTEN:

6 Q. Mr. Gateley, do you recall Mr. Clizer asked  
7 you about whether or not the company had performed a  
8 formal cost benefit analysis to determine whether or  
9 not it's more cost-effective to use third-party  
10 contractors as opposed to inhouse personnel?

11 A. Yes.

12 Q. It wasn't a full-blown study, but Mr. Cox  
13 did discuss the results of some calculations he had  
14 made in his surrebuttal testimony; is that correct?

15 A. I remember seeing that he had made some  
16 proposals on it, yes.

17 Q. And as part of its stipulation with staff,  
18 the company has promised to make a full-blown cost  
19 benefit analysis study of that very question; is that  
20 correct?

21 A. Yes.

22 Q. Mr. Clizer asked you a number of questions  
23 regarding how many systems a licensed operator could  
24 oversee; is that correct?

25 A. Yes.

1 Q. The word oversee implies that there are  
2 people below who are being overseen, would you agree?

3 A. That is not the way that I used that word,  
4 no.

5 Q. What did -- how did you use it?

6 A. My explanation of that meant the operation  
7 of it, the collecting of samples of it, and there is a  
8 lot that goes into just examining a system when you  
9 arrive that aren't necessarily turning levers, or  
10 taking a specific task, so I mean actually the one  
11 that DNR considers to be the operator of that system  
12 when I said that in that context.

13 Q. Mr. Clizer also asked you a number of  
14 questions about non-licensed people being able to do  
15 work on water or wastewater systems, do you recall  
16 that?

17 A. Not specifically, but I'll take your word  
18 for it.

19 Q. Well then let me ask it this way, can a  
20 non-licensed person do tasks -- operation and  
21 maintenance tasks for water and wastewater systems  
22 under the supervised -- supervision of a licensed  
23 operator?

24 A. Some tasks.

25 Q. Some tasks. But there are tasks that can

1 be performed by a person who does not have a license?

2 A. I would agree that there are some tasks  
3 under the supervision and direction of a certified  
4 operator that can be done.

5 MR. MITTEN: I don't have any further  
6 questions. Thank you.

7 JUDGE HATCHER: Thank you. That will take  
8 us to commissioner questions. Are there any  
9 commissioner questions for Mr. Gateley? Commissioner  
10 Kolkmeier.

11 COMMISSIONER KOLKMEYER: Thank you, Judge.  
12 Good morning, Mr. Gateley.

13 MR. GATELEY: Good morning.

14 COMMISSIONER KOLKMEYER: What is the  
15 staff's position on this issue of inhouse versus  
16 contract?

17 MR. GATELEY: In my surrebuttal testimony I  
18 suggested that the company move toward more inhouse  
19 operators. The settlement effort that's being  
20 discussed for this we were no longer presenting that  
21 as a -- as our preferred solution. This company's  
22 business practices is not like anything I've seen  
23 elsewhere. I still personally believe that the more  
24 of those tasks that a company can bring in under their  
25 own umbrella, their own employees directly reporting,

1 and not to, oh, for lack of a better term, some other  
2 level of bureaucracy that can interfere with  
3 communications and such, the more folks they have  
4 inhouse, the more likely you are to have what I would  
5 consider the best service.

6 COMMISSIONER KOLKMEYER: So originally you  
7 had proposed some inhouse, but at this time staff is  
8 not taking a position -- or backing off of that, did I  
9 understand you to say that?

10 MR. GATELEY: Yes.

11 COMMISSIONER KOLKMEYER: So what is the  
12 staff's position on the OPC's proposal?

13 MR. GATELEY: Staff did not take a position  
14 on the disallowance.

15 COMMISSIONER KOLKMEYER: Thank you.

16 JUDGE HATCHER: Any other commissioner  
17 questions? And we'll give that a second, we do have  
18 two commissioners on the Webex.

19 CHAIRMAN RUPP: No questions. This is  
20 Commissioner Rupp.

21 COMMISSIONER HOLSMAN: Judge, I got a  
22 question.

23 JUDGE HATCHER: Thank you. Chairman Rupp,  
24 go ahead.

25 CHAIRMAN RUPP: No, I said I had no

1 questions.

2 COMMISSIONER HOLSMAN: I think he said he  
3 had no questions.

4 JUDGE HATCHER: I'm sorry, maybe that was  
5 Commissioner Holsman.

6 COMMISSIONER HOLSMAN: Yes. Just briefly.

7 JUDGE HATCHER: Go ahead.

8 COMMISSIONER HOLSMAN: In Mr. Cox's  
9 testimony he said that having more FTEs inhouse would  
10 cause the rate payer more expenses, Mr. Clizer from  
11 OPC asked you if having more inhouse FTEs would  
12 potentially save money, and you said it's possible but  
13 it hasn't been studied, is it possible -- so there is  
14 conflict here between these two answers, is it  
15 possible that going the contractor method would save  
16 rate payers money?

17 MR. GATELEY: It's certainly possible,  
18 yeah.

19 COMMISSIONER HOLSMAN: Okay. So it's  
20 possible for either side to be right depending on  
21 inputs and circumstances?

22 MR. GATELEY: Correct.

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

25 JUDGE HATCHER: Thank you, Commissioner.



1 And the bench has no questions. That will take us to  
2 recross-examination and that will be Mr. Clizer.

3 MR. CLIZER: No questions. Thank you.

4 JUDGE HATCHER: Mr. Mitten.

5 MR. MITTEN: No questions.

6 JUDGE HATCHER: And redirect, Mr. Pringle.

7 MR. PRINGLE: Yes, Judge, very brief.

8 REDIRECT-EXAMINATION

9 BY MR. PRINGLE:

10 Q. Mr. Gateley, during your exchange for  
11 counsel for OPC you used the term "inhouse  
12 contractors," just for the record I want to clarify we  
13 mean inhouse employees; correct?

14 A. Correct.

15 Q. All right. And when that comes to  
16 operators, it means operators directly employed by the  
17 company; correct?

18 A. Yes.

19 MR. PRINGLE: All right. And that is it,  
20 Judge. Thank you very much.

21 JUDGE HATCHER: Thank you, Mr. Gateley, you  
22 are excused, subject to recall.

23 The bench notes that it is 11:48, my first  
24 inclination is to break for lunch; however, I do like  
25 having all of our information together, let's go ahead

1 and get started and let's see where we land.

2 Dr. Marke, this is your first visit, thank  
3 you, sir. Do you solemnly swear or affirm that your  
4 testimony today will be the truth and the whole truth?

5 DR. MARKE: I do.

6 JUDGE HATCHER: Thank you. Please have a  
7 seat. And, Mr. Clizer, your witness.

8 DIRECT-EXAMINATION

9 BY MR. CLIZER:

10 Q. Dr. Marke, can you please state and spell  
11 your name for the court reporter?

12 A. Sure, my name is Geoff Marke, and that's  
13 G-E-O-F-F, and the last name is Marke, M-A-R-K-E.

14 Q. And did you prepare or cause to prepare  
15 testimony in this case which has been premarked as  
16 Exhibit 206 for the direct testimony of Dr. Geoff  
17 Marke public, 206C direct testimony of Geoff Marke  
18 confidential, 207 rebuttal testimony of Geoff Marke  
19 public, and 207C rebuttal testimony of Geoff Marke  
20 confidential, and 208 surrebuttal testimony of Geoff  
21 Marke?

22 A. I did.

23 Q. Do you have any changes to those?

24 A. I do.

25 Q. What are those changes?

1           A.     Okay.  Rebuttal testimony, page 10, lines 5  
2 through 8.

3                   JUDGE HATCHER:  Counsel, is this going to  
4 be summarized in an errata sheet?

5                   MR. CLIZER:  It is, Your Honor; however,  
6 unfortunately, I don't have a copy with me right now,  
7 I do apologize; I was going to try and grab those in  
8 the earlier break, but I will produce them immediately  
9 upon recommission.

10                   JUDGE HATCHER:  That sounds good, we'll be  
11 coming back after lunch.  I'm sorry, go ahead,  
12 Dr. Marke.

13                   MR. MITTEN:  Your Honor, could Dr. Marke  
14 please repeat the references?

15                   DR. MARK:  Sure, Mr. Mitten.  Page 10,  
16 lines 5 through 8, and that's the rebuttal testimony.

17           Q.     (By Mr. Clizer.)  All right.

18           A.     It says according to the Missouri Economic  
19 Research and Information Center, or MERIC, database on  
20 Occupational Employment and Wage Estimates, or OEWS,  
21 there are an estimated, and what it originally says is  
22 2,290, and that should be amended to say 2,160 water  
23 and wastewater treatment plant and system operators  
24 in Missouri who make an annual mean wage of, and the  
25 original says 48,220, the amended should say 47,800.

1 MR. MITTEN: Your Honor, is that a  
2 correction or is he updating his testimony?

3 JUDGE HATCHER: Dr. Marke?

4 DR. MARKE: I'm updating it. Wait. Yes.

5 MR. MITTEN: That's not appropriate, I  
6 object.

7 MR. CLIZER: If that's the case, then there  
8 will not be a correction.

9 DR. MARKE: I've got a second surrebuttal,  
10 but it is an update as well, so --

11 MR. MITTEN: Okay.

12 Q. (By Mr. Clizer.) I'm trying to figure out  
13 a way to phrase this next question. Notwithstanding  
14 any updates which you cannot make, would your  
15 testimony today be substantially the same as what is  
16 in your prefiled testimony?

17 A. It would.

18 Q. And the answers there are true and correct  
19 to the best of your knowledge and belief?

20 A. Yes.

21 MR. CLIZER: There we go. Your Honor, I  
22 would move for the admissions of --

23 JUDGE HATCHER: I got you, Mr. Clizer. Are  
24 there any objections to the admission of Exhibits 206,  
25 207, and 208? Seeing none, they are so admitted. Go

1 ahead.

2 MR. CLIZER: I tender the witness.

3 JUDGE HATCHER: Mr. Pringle.

4 MR. PRINGLE: Yes, thank you, Judge. No  
5 questions.

6 JUDGE HATCHER: Mr. Mitten?

7 MR. MITTEN: No questions, Your Honor.

8 JUDGE HATCHER: Any commissioner questions  
9 for Dr. Marke? We have -- online we'll wait, we have  
10 Dr. -- we have Commissioner Kolkmeyer. Go ahead.

11 COMMISSIONER KOLKMEYER: I just got a  
12 promotion.

13 JUDGE HATCHER: Yeah.

14 COMMISSIONER KOLKMEYER: Thank you, Judge.  
15 Good morning, we're still there.

16 DR. MARKE: Good morning.

17 COMMISSIONER KOLKMEYER: How are we doing?

18 DR. MARKE: Doing well.

19 COMMISSIONER KOLKMEYER: Good. How much  
20 did you propose for the inhouse operators versus  
21 contract services?

22 DR. MARKE: So my initial recommendation  
23 was for \$600,000, and I provided an alternative  
24 estimate at 20 employees, that would have raised it to  
25 -- give me one second -- so on my page 13 of my

1 rebuttal testimony I said at 60,000 a piece -- at  
2 60,000 a piece, which I remind the Commission is above  
3 average pay for these types of positions, Confluence  
4 could hire as many as 20 operators and still produce  
5 cost savings of 494,000.

6 COMMISSIONER KOLKMEYER: Okay. Did that  
7 include FICA, and all of that --

8 DR. MARKE: It inclu- --

9 COMMISSIONER KOLKMEYER: -- insurance, full  
10 employment, taxes, and everything?

11 DR. MARKE: It included an estimated amount  
12 to cover insurance expenditures, it did not include  
13 vehicles.

14 COMMISSIONER KOLKMEYER: So that was --  
15 that's my next question, how much did you propose for  
16 vehicles, fuel, vehicle insurance, maintenance on  
17 these vehicles?

18 DR. MARKE: Sure, I did not propose any of  
19 that, and what I would do given the opportunity was to  
20 rely on Mr. Thies's schedule, so that's BTSR1, which  
21 includes vehicles listed at 10,729, and job supplies  
22 as an additional \$1,000, and other costs as an  
23 additional \$1,000, so I would not have a problem  
24 adding \$12,000 on to that number.

25 COMMISSIONER KOLKMEYER: Per employee?

1 DR. MARKE: Per system.

2 COMMISSIONER KOLKMEYER: Per system. Okay.

3 How much was proposed for an office to house these  
4 employees, warehouse space, maintenance, and  
5 utilities, and the insurance on these facilities?

6 DR. MARKE: So the same amount is what I  
7 would rely on, that \$12,000, and that's what the  
8 company provided.

9 COMMISSIONER KOLKMEYER: Okay. Thank you.

10 JUDGE HATCHER: Commissioner Hahn?

11 COMMISSIONER HAHN: Thank you. Dr. Marke,  
12 just a question about one of the items that was  
13 provided earlier by counsel, it's US Bureau of Labor  
14 Statistics data relating to employment levels for  
15 water and wastewater treatment plant and system  
16 operators, did you look into the availability of  
17 workforce to support your recommendation? So, for  
18 example, unemployment rate or availability of  
19 operators in the workforce to fill these positions?

20 DR. MARKE: Cursory. And I'll explain,  
21 Commissioner, how I came about that process. So my  
22 process in determining this was three-fold.  
23 Effectively, you know, when I've got questions, I seek  
24 out answers. So in this case I sought out MERIC  
25 initially to go ahead and provide BLS data, so the

1 Department of Labor at the federal level, as well as  
2 MERIC at the state level, have effectively an  
3 agreement where they share data, and this is what's  
4 populated. I'm not aware of any other dataset that  
5 looks at water system operators of Missouri, and this  
6 is effectively had, and it is statistically  
7 significant, or it would not be put in there. So  
8 effectively over 2,000 operators were surveyed and  
9 collected in terms of their mean average, I got to --  
10 we've been throwing that term around a lot, you know,  
11 I think even the company opened up with saying that,  
12 you know, these entry-level positions would be coming  
13 in \$45,000, those entry-level, that's a mean average,  
14 there is -- you know, the entry-level position is  
15 significantly lower than that, and again these are  
16 positions that don't require but a high school  
17 education, if that.

18 My next step after speaking with MERIC, and  
19 the Department of Labor, was effectively moving to DNR  
20 itself, and talking about that certification process.  
21 And what I was told that in some cases, depending on  
22 the type of system, and the complexity involved in it,  
23 you're going to have different levels of  
24 certification, they have a ongoing training list where  
25 they're attracting participants to go ahead and



1 effectively train for these operating positions, it's  
2 in flux, it's a moving target, no doubt there is a  
3 graying of the population, I think Mr. Cox spoke to  
4 that, I mean, I would say that that's true everywhere.  
5 And again, with the dollar amount that we were putting  
6 out here, even at \$60,000, like, that's a very healthy  
7 salary for somebody with a high school diploma in a  
8 rural part of the state. So we feel confident that at  
9 such a level you could go ahead and attract people to  
10 train, and to move up there, perhaps this isn't an  
11 immediate process, but again money talks in that  
12 sense. So that's -- that was the basis of that.

13 COMMISSIONER HAHN: Okay. That's helpful  
14 to understand. Did you look at unemployment levels by  
15 region at all compared to where your proposal  
16 suggested that those people should be working in those  
17 specific regions or groupings?

18 DR. MARKE: No. I mean, I'm -- I -- in a  
19 previous career I worked in labor for a little bit,  
20 I'm very familiar with the unemployment insurance and  
21 how that breaks down, it's general in nature, so it's  
22 a -- to confine it for a specific occupation would be  
23 much more of a challenge. I can tell you like in  
24 broad-brush strokes unemployment has gotten a lot  
25 better in a lot of respects, you know, preCOV- -- you

1 know, post-COVID, but, no, not on an individual waste  
2 water/water treatment.

3 COMMISSIONER HAHN: Were you aware that the  
4 unemployment rate for Missouri in June was 2.6 percent  
5 and that full employment is considered 4 percent?

6 DR. MARKE: I'm sorry, can you state that  
7 again?

8 COMMISSIONER HAHN: Were you aware that  
9 Missouri's unemployment level for June of this year  
10 was 2.6 percent and that full employment of the  
11 workforce is 4 percent roughly?

12 DR. MARKE: I wasn't aware of the specific  
13 numbers, I know that -- and I'm sure you're aware of  
14 this, too, that when we're talking about unemployment  
15 levels, there is different levels of how you couch  
16 that. But, no, I was not.

17 COMMISSIONER HAHN: Okay. I'm just trying  
18 to understand the availability of workers to fill the  
19 roles that you had proposed. Thank you.

20 JUDGE HATCHER: Are there any other  
21 commissioner questions?

22 CHAIRMAN RUPP: I have some questions.

23 COMMISSIONER HOLSMAN: No questions, Judge.

24 JUDGE HATCHER: I heard both commissioners  
25 on the Webex speak at once, if any of those two have a

1 question, go ahead.

2 CHAIRMAN RUPP: This is Commissioner Rupp,  
3 I have a question for Dr. Marke.

4 JUDGE HATCHER: Yes, Chairman, go ahead.

5 CHAIRMAN RUPP: Dr. Marke, I appreciate all  
6 of the hard work and everything that you have put  
7 into, you know, trying to estimate these numbers, was  
8 it a goal of OPC to get the Commission to start to  
9 contemplate this issue for future rate cases with the  
10 company and to draw out data from the company and that  
11 to kind of start this conversation, was that an  
12 overall goal of OPC, or are you dying on the sword  
13 that this needs to happen right now and these numbers  
14 are the best offering?

15 DR. MARKE: That's a great two-part  
16 question, Chairman. So as OPC, the way that I  
17 approach, you know, any case that's put before the  
18 public service commission is with a healthy degree of  
19 skepticism, we're looking for efficiencies, we're  
20 looking for where there can be cost control  
21 containment, and as, you know, the commission is aware  
22 of, the dollar amount issues that we're talking about  
23 in this case are not capital items, these are all  
24 expense items, and this is where really regulatory lag  
25 and the concept of regulatory lag really comes to

1 fruition as a real benefit for the company, because if  
2 they can find cost savings in cutting operation  
3 expense, then they get to reap those rewards before  
4 they come back in for another rate case. We -- it's  
5 been a decade, roughly a decade now, that this company  
6 has been operating in this state, it shocked me  
7 actually after reading the direct testimony of the PSC  
8 that this company was still operating in a  
9 contract-based model, I'm not aware of any model -- of  
10 any utility that works like that in the United States,  
11 that's a foreign concept to me.

12           A further cursory look at, you know, the  
13 contracts of such, you know, where -- in the contract  
14 you can see, like, all operators, or extended  
15 personnel, anything that's out of pocket, they are  
16 able to recoup ten percent of that on top of those  
17 costs, it's those little things that add up, and it  
18 adds up when you're talking about a utility that has  
19 under 5,000 customers. I know we've put forward again  
20 that it's been 9,000 -- it's 9,000 connections of  
21 water and sewer, but it's 5,000 customers, so these  
22 small dollars do add up. So -- and I'm aware that the  
23 staff and the company have entered into a cost benefit  
24 study moving forward, quite frankly, that should have  
25 happened a long time ago. I mean, the company -- you

1 know, if reading the room here, they should move  
2 forward with the study regardless of any sort of  
3 stipulation. But to answer your question directly,  
4 Chairman, this isn't necessarily something that I  
5 would die on my sword over, my concern is if left --  
6 if the Commission doesn't give the company some sort  
7 of direction of why this is important, and why we --  
8 they need to value cost savings and have effectively  
9 some more meat within their order, we will be in the  
10 exact same position several years from now talking  
11 about a study where the inputs have not been agreed  
12 upon, and we're no better off. And there is a level  
13 of frustration there that -- you know, I mean this is  
14 -- that is the regulatory nature of things, but, you  
15 know, the hope here really is that the Commission can  
16 recognize that there -- this is unusual, and we  
17 believe that there are savings there, an objective  
18 look at that I think would be a step in the right  
19 direction.

20 CHAIRMAN RUPP: Thank you, Dr. Marke, I  
21 appreciate your testimony as usual.

22 DR. MARKE: Thank you.

23 JUDGE HATCHER: Thank you, Chairman.

24 COMMISSIONER HOLSMAN: Judge, I have a  
25 question to commission -- Chairman Rupp's questions.

1 JUDGE HATCHER: Yes, go ahead, Commissioner  
2 Holsman.

3 COMMISSIONER HOLSMAN: Thank you. So if  
4 the company has the opportunity to earn on cost  
5 savings, and the company also is testifying that going  
6 with a third-party contractor is the most  
7 cost-effective way to go, why wouldn't they -- if what  
8 -- if your position of there is cost savings with  
9 inhouse employees, and they were to be able to earn on  
10 that, why wouldn't they do what's in their own best  
11 interest, if not for but the truth of the fact that it  
12 is cheaper going with third-party contractors?

13 DR. MARKE: That's a great question,  
14 Commissioner. The way I look at this, and I'm a bit  
15 biased in my perspective here, but at the heart of  
16 utility regulation, you know, I consider it economic  
17 regulation, if this was a market entity, they would be  
18 acutely aware of what their salaried employees are  
19 making, and trying to be very aware of the margins,  
20 you know, that are produced in terms of profit, not so  
21 with a regulated utility, we have an opportunity to  
22 shine a lot when a utility files a rate case, and as  
23 you can see, and, you know, the record speaks for  
24 itself, there was a number of discovery issues in this  
25 case, there was a number of opportunities where the

1 inherent nature of asymmetrical information is such we  
2 don't get the information, we have to ask questions,  
3 upon questions, upon questions, or we get, Well --  
4 like you heard from Mr. Cox, That wasn't specifically  
5 what you asked for. We can only operate with the  
6 information that we have.

7           The company should be looking for this sort  
8 of stuff. So the question is, is why aren't they  
9 doing it or why should we just take it at face value?  
10 And that comes full circle with really the theme of my  
11 entire testimony is that this is a company who is  
12 really good at acquiring distressed systems. I'm less  
13 concerned -- I'm more concerned about whether or not  
14 they can operate as a utility moving forward. To  
15 appease that, I believe, and I believe staff has  
16 echoed this sentiment, is a move towards inhouse  
17 personnel, having somebody present at these systems  
18 that can address the concerns of what we heard from  
19 public hearings, from the overwhelming number of EFIS  
20 comments, all of that plays into it, because I don't  
21 see this as a long-term, stable outcome.

22           So why didn't the company do this? Quite  
23 frankly because I believe their priority has been on  
24 acquiring systems in other states and not on operating  
25 the systems that they have here. I think it's very

1 easy to go ahead and sign a contract and forget about  
2 it. And you see that in the examples that we're  
3 paying marked-up cost for chemicals, we're paying  
4 marked-up cost for out-of-pocket expenses, and so  
5 forth. Again, we're -- ultimately at the end of the  
6 day we're on the same page in terms of finding  
7 efficiencies, or we should be in terms of finding  
8 efficiencies, because the outcome we're putting  
9 forward for the company is one where they can make  
10 more money.

11 COMMISSIONER HOLSMAN: Okay. So given that  
12 position and the answer to Chairman Rupp's question  
13 which is you believe that going forward they're going  
14 to do this study to make the determination, the  
15 question then becomes if a decision can be either  
16 positive or negative based on inputs, and based on,  
17 you know, circumstances, is the decisions the company  
18 made in your mind imprudent?

19 DR. MARKE: I think it is imprudent. I  
20 think the company left -- is charging -- is  
21 overcharging customers effectively for the services  
22 that are being offered. That's --

23 COMMISSIONER HOLSMAN: Okay.

24 DR. MARKE: Yeah.

25 COMMISSIONER HOLSMAN: Okay. But going



1 forward though we assume that this situation can be  
2 corrected in the next rate case?

3 DR. MARKE: I characterize myself as an  
4 overly optimistic person, you know, to a fault. You  
5 know, I cringe a little bit here saying that, you  
6 know, we're going to get a uniform agreement and the  
7 company is going to see the light and move forward  
8 with moving off of their contract-based system, I  
9 agree that there needs to be discussion about how that  
10 would be phased-in over time, and looking at the  
11 practical applications like storage, and vehicles, and  
12 stuff like this, but at the end of the day I have  
13 serious reservations that we'll be in the exact same  
14 position as we are in the last case.

15 COMMISSIONER HOLSMAN: We've talked in this  
16 case, throughout this case, about comparison to other  
17 states, we've looked at other state's ROEs, we've  
18 looked at other state's tax treatment, in testimony  
19 Mr. Cox said that in every other state that they  
20 operate they use a third-party contractor, in all of  
21 the previous rate cases, the staff-assisted cases that  
22 they've done for the last decade, they've used  
23 third-party operators, why is it now a -- you know, a  
24 shift that you're suggesting it's imprudent, all of  
25 those other states have been imprudent, all of the

1 previous rate cases have been imprudent, why is it  
2 imprudent now when you said it's possible that it  
3 could save money?

4 DR. MARKE: That's a great question. I  
5 would not put forward that it was imprudent prior to  
6 this. The contract-based model initially did make a  
7 lot of sense to me. Right now the company is at a  
8 size where effectively they will be eligible for  
9 additional legislative freedom, I guess is the best  
10 way to describe it, the introduction of a fair market  
11 valuation as they bid into more systems is going to  
12 directly -- that's your incentive.

13 You know, I know we were talking about, you  
14 know, raising ROE, or doing something with taxes, the  
15 company has all of the incentive in the world moving  
16 forward because of its fair market valuation being a  
17 fair market valuation state, so what's going on in  
18 Louisiana or Mississippi that, you know, we -- well  
19 what I would -- my first point would be I wouldn't use  
20 Mississippi as the north star for how regulatory  
21 affairs should be handled, you know, and I can't speak  
22 directly on those individual places, I mean, I --  
23 actually I can to a certain extent, I know how big the  
24 Mississippi staff is, I've got a sense of where things  
25 are at in terms of Louisiana, I know they both don't

1 have consumer advocates, for example, you're talking  
2 about this is Missouri, and the regulatory setup here  
3 is such where it's going to be much, much more  
4 favorable for this company moving forward as they  
5 acquire more customers. And that again just  
6 underscores, like, hey, maybe it's time we started  
7 acting like a utility, let's start acting and  
8 employing actual customer -- or employees that are  
9 certified for the company and that can be held  
10 accountable for it. Absent that, I really do -- and I  
11 realize not everything got fleshed-out this morning,  
12 but we have serious reservations over the contracts  
13 that have been entered into and the quality of the  
14 contractors that are being employed. We believe that  
15 more immediate management, and in a centralized  
16 location within the state, should prevent bad things  
17 from happening in the future.

18           COMMISSIONER HOLSMAN: Okay. And my final  
19 question, do you have confidence that the study that  
20 staff and the company have agreed to enter into will  
21 be a accurate representation going forward as this new  
22 framework as a mature utility moving from a small  
23 startup into a mature utility, do you feel like the  
24 agreement that they've made will produce results  
25 that's satisfactory to OPC?

1 DR. MARKE: So I believe, Commissioner,  
2 that -- so we've got experience with this, we've got  
3 experience doing studies with utilities and such, and  
4 I would say it's a 50/50 breakdown. The success that  
5 we've had with utilities with identifying issues, a  
6 lot of it has to come down to the parameters  
7 surrounding that actual -- that study, and what I  
8 would recommend the Commission, if they're serious  
9 about going down that path, is ensuring that it's an  
10 independent third-party contractor that's agreed to  
11 amongst OPC staff and the company, and if they can't  
12 agree to it, we have language in there that says it  
13 gets kicked up to the Commission to decide. We're  
14 looking for impartial objective opinion at the end of  
15 the day. I've been involved in a number of different  
16 cost-benefit studies, and, you know, the devil is  
17 absolutely always in the inputs and the details. So  
18 again, I'm optimistic, the company should be pursuing  
19 this, at face value it makes a lot of sense, but I'm  
20 hesitant to give my full endorsement when, you know,  
21 the company is resistant on keeping time sheets, when  
22 the company is resistant, you know, on bare-level  
23 things, and the resistance that we got in terms of  
24 just discovery. So perhaps, you know, this rate case  
25 will change, but I'd be much more comfortable and

1 confident with a declarative statement from the  
2 Commission to provide some teeth to that.

3 COMMISSIONER HOLSMAN: Thank you very much.  
4 Judge, that is all of my questions.

5 JUDGE HATCHER: Thank you, Commissioner.  
6 Are there any other commissioner questions? All  
7 right. Hearing none. The bench has no questions. My  
8 strong preference is to finish now. Okay. I'm seeing  
9 nodding heads. Let's go to recross. That will be  
10 Mr. Pringle.

11 MR. PRINGLE: Yeah, thank you, Judge. No  
12 questions from staff.

13 JUDGE HATCHER: Mr. Mitten?

14 MR. MITTEN: No questions from the company.

15 JUDGE HATCHER: Redirect, Mr. Clizer.

16 MR. CLIZER: I'll try and keep this  
17 relatively brief.

18 REDIRECT-EXAMINATION

19 BY MR. CLIZER:

20 Q. Dr. Marke, you referenced fair market  
21 valuation a couple of times, just for the record what  
22 is fair market valuation you're referring to?

23 A. Legislation, it's -- I believe it's in  
24 about 11 states now, but it would -- it's an appraisal  
25 statute that would allow the utility to go ahead and

1 take the lesser of two appraisals, maybe three, I  
2 think it's two, appraisals, but allow that utility to  
3 have a depreciated system effectively elevated in  
4 terms of its rate base. In short it would allow --  
5 it's more attractive to acquire distressed systems as  
6 a result of it.

7 Q. For the record, so I can cite to it, you're  
8 referring to the appraisal-based acquisition of small  
9 water systems statute?

10 A. Yes.

11 Q. You were asked a question from Chairman  
12 Rupp regarding whether or not you wanted to die on the  
13 sword here, and one of the things that was mentioned  
14 that kind of caught my ear was to draw out data --  
15 whether or not this was in part to draw out data, and  
16 I think you've touched on this already briefly, but  
17 what difficulties did we have drawing out that data in  
18 this case?

19 A. So asymmetrical information is inherent in  
20 everything that we -- in utility regulation. At the  
21 beginning of -- when I first approached this case, I  
22 read Mr. Cox's testimony, and he expounded upon the  
23 number of systems that he had acquired, you know, I  
24 cross-referenced that with testimony that he had filed  
25 in Mississippi several months earlier and noticed a

1 huge discrepancy, hundreds of systems, come to found  
2 out in less than half of a year they had acquired more  
3 than 400 plus systems, as an anecdotal example my  
4 question to the company was, Well, what are these  
5 systems? And we received enormous pushback from this  
6 basic question. This was a consistent theme that we  
7 had run across throughout this testimony, throughout  
8 this case, and that was inherent with how we came up  
9 with -- how I came up with the numbers and the  
10 breakdown, I relied on company-specific data. I know  
11 Mr. Woodsmall was very glib with boxes on a map as a  
12 kindergarten level, those boxes on the map were  
13 effectively tied as tight as possible with the  
14 existing operators that this company works with. But  
15 as you saw, you know, earlier this morning, you know,  
16 it -- we can only do with the information that we're  
17 provided with, what we're given, so, you know, these  
18 are the concerns that I've got moving forward in terms  
19 of can we be on the same page for cost-effective  
20 tests.

21 Q. And you were asked a couple of questions by  
22 Commissioner Hahn regarding unemployment data, and I  
23 think she might have been referencing information  
24 provided by the U.S. Bureau of Labor Statistics, I'm  
25 not sure, did the information you reviewed include

1 information provided by the U.S. Department of Labor  
2 Statistics?

3 A. Yes.

4 Q. Would you expect that they would have taken  
5 into consideration unemployment data as part of their  
6 calculation?

7 A. I don't think they would.

8 Q. Okay. I believe you were asked a question  
9 by Mr. Holsman -- sorry, Chairman -- Commissioner  
10 Holsman -- I apologize, I'm trying to promote you. I  
11 believe you were asked a question by Commissioner  
12 Holsman sort of regarding the future operations in  
13 this state, do you recall that?

14 A. I do.

15 Q. Have you reviewed any information related  
16 to what you expect the company would be able to  
17 acquire still in this state?

18 A. I have.

19 Q. And what would that -- what information --  
20 what have you learned?

21 A. Well, what I've learned is effectively that  
22 there are very few water systems that are in  
23 noncompliance, like effectively 99 percent or more --  
24 a little bit more than 99 percent are compliant today,  
25 that they're safe drinking water, and this is all



1 public information on DNR's website. There are two  
2 systems that I'm aware of that have been flagged. And  
3 when we use the term compliant, or, you know, that's a  
4 concern, there is a range within that. So if a water  
5 system doesn't file a quarterly report, for example,  
6 they might be out of compliance for a brief while.  
7 When you're talking about seriously, you know,  
8 distressed systems, there are more on the wastewater  
9 side, but very, very few on the water side. I think  
10 the number had been put forward like 3,000 systems  
11 that are in noncompliance, and I have seen no evidence  
12 of anything approaching those numbers in the State of  
13 Missouri. And again, with fair market valuation  
14 legislation that's been passed and -- I see no problem  
15 in being able to attract utilities to acquire systems  
16 if they're put in that position.

17 Q. In response to those same questions you  
18 mentioned the graying of the population as an issue,  
19 that would be an issue regarding all jobs across the  
20 job market; correct?

21 A. Correct.

22 Q. Would -- how would you expect that to be  
23 dealt with with regard to your proposal?

24 A. I'm sorry, could you ask me that question  
25 again?

1 Q. Actually let me rephrase it a different  
2 way. Would the graying of the population also affect  
3 the ability to hire contract operators?

4 A. Sure.

5 Q. The final -- I'm going to turn lastly to  
6 the questions you were posed by Commissioner Kolkmeyer  
7 regarding the actual amount of your proposal. I  
8 believe that you indicated that that amount would  
9 potentially be capable of being changed if you took  
10 other considerations into effect; is that right?

11 A. That's correct.

12 Q. So what you're asking is for the Commission  
13 to consider all factors and make a recommend -- a  
14 decision based on all of the available evidence even  
15 if it's not exactly consistent with your  
16 recommendation?

17 A. I think the Commission has a fair amount of  
18 discretion as to, you know, what that can be set at.

19 MR. CLIZER: I don't think I have any  
20 further questions. Thank you, Your Honor.

21 JUDGE HATCHER: Thank you. Dr. Marke, you  
22 are dismissed, subject to recall. We are at lunch  
23 until 1:30. 1:30.

24 MR. PRINGLE: Just one thing, Judge, about  
25 the corrections to Mr. Williams' testimony, just --

1 JUDGE HATCHER: 1:30.

2 MR. PRINGLE: 1:30. All right.

3 JUDGE HATCHER: 1:30. We are at recess and  
4 off the record. Thank you.

5 (Short break held off the record.)

6 JUDGE HATCHER: Okay. We are on the  
7 record.

8 Let's talk about your correction,  
9 Mr. Pringle.

10 MR. PRINGLE: Yes, thank you very much,  
11 Judge. The correction is to the testimony of staff  
12 witness Daronn Williams, his rebuttal, that has been  
13 premarked as Staff Exhibit 120. The correction can be  
14 found -- and I have shared this with the parties, the  
15 correction can be found on pages 5 and 6. On page 5,  
16 starting on line 18 through line 19, we are striking  
17 the following language, quote, Mentioned the removal  
18 of the partially treated wastewater from the field  
19 and access road, and does not, end quote. That  
20 language is being stricken out. And on page 6, on  
21 line 1, staff would like to strike out the following  
22 language, quote, Remediate the overflowed sewage at  
23 Fox Run, comma. And, Judge, if you'd like that in an  
24 errata sheet, we can produce an Exhibit 134, or amend  
25 Exhibit 133, but that is the extent of the correction.

1 JUDGE HATCHER: Do counsel for the parties  
2 have any suggestions? My inclination is just to allow  
3 this correction to stand, we're at the end, I don't  
4 want to make more work. Excellent. I've got nods  
5 assent from counsel for the record. The correction is  
6 per the record transcript which will be produced and  
7 corrected is exhibit --

8 MR. PRINGLE: Exhibit 120.

9 JUDGE HATCHER: Exhibit 120. Thank you.

10 MR. PRINGLE: That's correct. Thank you,  
11 Judge.

12 JUDGE HATCHER: That's taken care of. I  
13 think my next order of business, mainly so I can think  
14 about what I'm going to do after this, is read through  
15 the list of exhibits that I do not have entered, I  
16 would like to make it short for the parties because of  
17 the unique circumstances of practice in the  
18 Commission, we have prefiled testimony, and there are  
19 rarely objections to that testimony, at least at the  
20 evidentiary hearing, for that reason I would like to  
21 consolidate my request, not so broad as to say all of  
22 yours are admitted, I am going to read the numbers,  
23 but what I would like to do is, for Confluence, for  
24 example, I would like to read exhibit number, and the  
25 last name of the witness, I would like to read all --

1 a handful of those in one list, I will then ask for  
2 objections to any of those, and then we will move on  
3 to staff's exhibit list. I'm seeing nods of assent,  
4 we shall start.

5           These are the exhibits that the Commission  
6 understands to be offered for admission onto the  
7 hearing record. One, Allis. Two, Allis. Allis is  
8 spelled A-L-L-I-S. Three, Allis. Ten, Freeman.  
9 Eleven, Freeman.

10           MR. COOPER: Dean Cooper on behalf of  
11 Confluence Rivers. Judge, the only question we had  
12 was the rebuttal testimony of Mr. Seltzer, Exhibit 16,  
13 it sounds like you have that marked as admitted?

14           JUDGE HATCHER: Yes.

15           MR. COOPER: Thank you.

16           JUDGE HATCHER: If not, I'll add it, 16.  
17 And unfortunately with my note-taking I also do not  
18 have Mr. Thomas's marked as accepted, so I'm going to  
19 add 20, Thomas; 21, Thomas; 22, Thomas. Are there any  
20 objections to accepting the aforementioned? Hearing  
21 none, they are all so admitted, I will not repeat the  
22 numbers.

23           Staff -- or counsel for the company, this  
24 might have been when you were ill, I think I requested  
25 -- I think I requested and I cannot remember what it

1 was --

2 MR. MITTEN: DR 0066? Is that what you're  
3 thinking about? That may have been on Monday when I  
4 was -- when I did appear.

5 JUDGE HATCHER: Let's go with that. I  
6 thought I had that written down somewhere else, but  
7 that might be my note, but that -- because that does  
8 ring a bell. Okay.

9 Staff, I'm going to do the same for your  
10 witness list, I'm going to read off a number, and a  
11 last name, of all of the ones I do not have checked  
12 off, and then I'll ask for objections.

13 102, CoffeR. 104, GlasgOW. 105, Lyons.  
14 106, Roos, spelled R-O-O-S. Lyons is L-Y-O-N-S.  
15 CoffeR is C-O-F-F-E-R. 1 --

16 MR. MITTEN: Oh, was that it from your  
17 list, Judge?

18 JUDGE HATCHER: No.

19 MR. MITTEN: Oh, okay, sorry.

20 JUDGE HATCHER: I'm still going. 112,  
21 staff accounting schedules. 114, CoffeR. 116,  
22 Harris, common spelling. 118 -- no, we've got 118.  
23 120, Williams as corrected previously in this  
24 transcript. 121, accounting schedules. 124, CoffeR.  
25 127, GlasgOW, G-L-A-S-G-O-W. 128, Lyons. That's my

1 entire list.

2 MR. MITTEN: That's what we have as well,  
3 Judge, that's everything that still needs to be  
4 admitted.

5 JUDGE HATCHER: Any objections from the  
6 parties to the prior listed amend -- exhibits? No  
7 objections, they are so admitted, I will not list them  
8 again.

9 On that note, before I forget, as per my  
10 practice some time in the next -- today is  
11 Wednesday -- some time in the next two days, by the  
12 end of this week, I will produce a list of -- the  
13 exhibit list of what has been amended with the short  
14 descriptor, my descriptor for the DRs are not going to  
15 indicate who they came from, because it's my belief  
16 and understanding that the numbers are not duplicated,  
17 we would not ever have two of the same number.

18 UNIDENTIFIED SPEAKER: Due to the numbering  
19 system, that should be fine.

20 JUDGE HATCHER: Okay. Excellent.

21 MR. MITTEN: And just for the record,  
22 Judge, for staff we just wanted to confirm that our  
23 total exhibits should be Exhibit 100 through 133, and  
24 133 being the errata sheet that was entered on the  
25 first day.

1 JUDGE HATCHER: Talk to me about 134 and  
2 135. Remind me. They are Hillcrest and Raccoon  
3 Creek. And it is a partial disposition agreement is  
4 135. And 134 is a partial disposition for Hillcrest.

5 MR. WOODSMALL: That's correct; Judge.

6 JUDGE HATCHER: They were marked, were they  
7 offered?

8 MR. WOODSMALL: I don't recall, I'd offer  
9 them now.

10 JUDGE HATCHER: Any objection to 134, 135?  
11 Hearing none, they are so admitted.

12 Office of Public Counsel, you've heard the  
13 routine, you're caught-up. 200, Robinett. 201,  
14 Robinett. 202, Robinett. Because of how also public  
15 counsel listed those, I just want to clarify, all of  
16 my numbering included both public and confidential  
17 versions. 204, Seaver, spelled S-E-A-V-E-R. And I  
18 apologize, Robinett is R-O-B-I-N-E-T-T. 205, Seaver.  
19 212, Schaben, S-C-H-A-B-E-N. 213, Schaben. 214,  
20 Schaben. That's my list for the Office of Public  
21 Counsel. Are there any objections to the admission of  
22 those above listed exhibits? Seeing none, they are  
23 all so admitted.

24 I don't want to open a can of worms, but on  
25 my sheet I have 246 and 247 were not admitted, they



1 were --

2 MR. CLIZER: Could you remind me what 246  
3 and 247 were? I believe that 246 was the -- well, I  
4 will just wait.

5 JUDGE HATCHER: 247 was Occupational  
6 Employment Wage Statistics, May 2022. 240- -- oh,  
7 this is the web page you printed out.

8 MR. CLIZER: I thought that the bench asked  
9 that to be offered, and I will offer it for that  
10 reason, or was I mistaken?

11 JUDGE HATCHER: No, we did one. We did one  
12 of them.

13 MR. CLIZER: We did do one of them --

14 JUDGE HATCHER: Okay.

15 MR. CLIZER: -- that would be 245, I was  
16 under the impression that you wanted both, but if you  
17 don't, that's fine, 245. But I do want to offer 247  
18 if it wasn't, I believe it was offered.

19 JUDGE HATCHER: Okay. 247, you heard the  
20 motion, any objections to 247? That's the  
21 Occupational Employment and Wage Statistics, May 2022.  
22 No objection, so admitted. 248, DNR rules.

23 MR. CLIZER: We -- I asked you whether or  
24 not I needed to admit it or if I could cite to it in  
25 my brief and you indicated that I could just simply

1 cite to it since it's the DCSR.

2 JUDGE HATCHER: Yes; you're right, thank  
3 you for reminding me.

4 MR. CLIZER: No problems.

5 JUDGE HATCHER: That takes care of those  
6 exhibits.

7 Let's backtrack, Office of Public Counsel,  
8 can you look on your list, 221? That is where I have  
9 Staff DR 66 written down.

10 MR. CLIZER: Yes, I -- if I remember  
11 correctly, and I invite others to correct me if this  
12 is wrong, but I believe that issue was taken-up during  
13 the cross-examination of Mr. Majors for the  
14 acquisition issue, and I discovered at that time that  
15 he had developed that document, and acting on  
16 suspicion that the Commission would like it, offered  
17 it for --

18 JUDGE HATCHER: Yes.

19 MR. CLIZER: -- offered it.

20 JUDGE HATCHER: So those are his work  
21 papers?

22 MR. CLIZER: That is my understanding. I  
23 again would point out I don't actually have a copy of  
24 that.

25 JUDGE HATCHER: No, no, you're good, it

1 clicked now. You've got work papers. You've got the  
2 DR.

3 MR. WOODSMALL: Exactly.

4 JUDGE HATCHER: Thank you. For the record,  
5 that means the Office of Public Counsel was filing the  
6 work papers and the company was filing the DR and  
7 response.

8 Are we ready to talk schedule? Do we have  
9 other issues? I mean, no substantive issues, but  
10 anything else to discuss?

11 Okay. Let's talk due dates. We only have  
12 two outstanding exhibits to file. Next Thursday? Go  
13 ahead, Mr. Clizer.

14 MR. CLIZER: Was it the bench's request or  
15 understanding that parties would send an electronic  
16 copy of the filed exhibits at some point or are we  
17 standing on the paper copies that have been handed out  
18 as part of the actual evidentiary hearing? Because my  
19 life would be much easier if you're going to do the  
20 latter, but I think you might want the former.

21 JUDGE HATCHER: I'll take care of it for  
22 you. I got you. Okay. Same for the company. I  
23 don't know about staff.

24 MR. WOODSMALL: Your Honor, just to  
25 clarify, the late-filed Exhibit DR 66, do you want us

1 to put it into EFIS or send it to you for you to put  
2 into EFIS? Whatever your preference is.

3 JUDGE HATCHER: Would you please file it in  
4 EFIS?

5 MR. WOODSMALL: Yes.

6 JUDGE HATCHER: The due date is next  
7 Thursday, because I already said that date and I hate  
8 changing dates, and objections to the late-filed  
9 exhibits will be due the following Thursday, 24th for  
10 the due date, objections due --

11 MR. WOODSMALL: 31st.

12 JUDGE HATCHER: -- 31st.

13 MR. CLIZER: Your Honor, on that note, I  
14 would make the same request -- or same question  
15 regarding the staff work papers.

16 JUDGE HATCHER: Yes, I -- no, I want you  
17 both to file the exhibits so that everybody has it in  
18 EFIS, we'll go through the normal procedure, we'll  
19 wait for objections, because we haven't seen it, so --

20 MR. CLIZER: I understand.

21 JUDGE HATCHER: -- let's go that route.  
22 That should coincide, give or take, with submission of  
23 the transcript. Does anybody have the dates? The  
24 judge is looking them up, let's take just a moment.

25 UNIDENTIFIED SPEAKER: Your Honor, I can't

1 find it, and now I'm frankly wondering if we moved  
2 those dates when we changed the rest of the schedule?

3 JUDGE HATCHER: March 25th.

4 UNIDENTIFIED SPEAKER: March?

5 JUDGE HATCHER: No, no, no, no. No, no, I  
6 don't mean the due date, I mean in EFIS, the filing  
7 date in EFIS, April, April 25th, EFIS item number 46,  
8 that is order granting motion to amend procedural  
9 schedule.

10 UNIDENTIFIED SPEAKER: Here I found a reply  
11 brief for September 19th, but I can't find the initial  
12 brief.

13 JUDGE HATCHER: September 8th.

14 UNIDENTIFIED SPEAKER: Thank you.

15 MR. CLIZER: And, Your Honor, is it correct  
16 to take that to mean that those are the -- we are not  
17 changing them?

18 JUDGE HATCHER: That's what we're here to  
19 discuss, if you want to change them, make a -- make  
20 said motion, but the dates right now are September 8th  
21 for initial briefs, September 19th for reply briefs.

22 MR. CLIZER: Your Honor, may I inquire when  
23 is the transcript expected?

24 JUDGE HATCHER: Ten business days after  
25 today.

1 MR. CLIZER: After today?

2 JUDGE HATCHER: On or about August 30th by  
3 my count.

4 MR. CLIZER: September 19th for the reply  
5 brief?

6 JUDGE HATCHER: Yes. I have no other  
7 Post-Its to remind me of anything, I am ready to close  
8 the hearing. Counsel, any other matters? Take a  
9 second to think on it. I will contact counsel by  
10 email if the Commissioners request to have what is  
11 known as an on-the-record presentation. I have not  
12 given counsel a deadline to file the stipulation.

13 MR. CLIZER: It is my belief that I hope we  
14 can accomplish that by this Friday, personally  
15 speaking for the OPC, I don't know if you guys think  
16 differently.

17 MR. PRINGLE: Yeah, I would hope, Judge,  
18 we'd have something finalized by early next week at  
19 the latest, but hopefully Friday would be fantastic if  
20 we could get it filed by then.

21 JUDGE HATCHER: I have been -- Yes?

22 MR. CLIZER: It looks like, if I may offer,  
23 can you simply request that the parties file an update  
24 by next, say, Monday or something?

25 JUDGE HATCHER: Update or a stipulation no

1 later than end of business Tuesday, that is Tuesday,  
2 the 22nd of August 2023. Going once. Going twice.  
3 We are adjourned and off the record. Thank you, all.

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My Commission expires January 21, 2025.



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