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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

November 28, 2017

Jefferson City, Missouri

Volume 4

In the Matter of the Rate ) File No.  
Increase Request of Indian Hills ) WR-2017-0259  
Utility Operating Company, Inc. )

DANIEL JORDAN, Presiding,  
SENIOR REGULATORY LAW JUDGE  
STEPHEN M. STOLL  
WILLIAM KENNEY  
MAIDA J. COLEMAN,  
COMMISSIONERS.

REPORTED BY:  
Patricia A. Stewart, CCR No. 401  
ALARIS LITIGATION SERVICES

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1 P R O C E E D I N G S

2 (WHEREUPON, the evidentiary hearing began at  
3 8:30 a.m.)

4 JUDGE JORDAN: We are on the record.

5 Good morning everyone. The Commission is  
6 calling the action in File No. WR-2017-0259. This is in  
7 the matter of the application for a rate increase for  
8 Indian Hills Utility Operating Company, Inc. My name is  
9 Daniel Jordan. I'm the regulatory law judge assigned to  
10 this action.

11 I'm going to ask first that everyone silence  
12 their cell phones and other devices as I am doing now,  
13 and let's take entries of appearance, beginning with the  
14 Applicant Indian Hills.

15 MR. COOPER: Thank you, Your Honor.

16 Dean Cooper from the law firm of Brydon,  
17 Swearngen & England, P.C., appearing on behalf of  
18 Indian Hills Utility Operating Company, Inc.

19 JUDGE JORDAN: And for the Commission Staff.

20 MR. THOMPSON: Thank you, Judge.

21 Kevin Thompson and Nicole Mers for the  
22 Commission Staff.

23 JUDGE JORDAN: Thank you.

24 And for the Office of the Public Counsel.

25 MR. SMITH: Good morning, Judge. Good

1 morning, Commissioner.

2 Ryan Smith on behalf of the Office of the  
3 Public Counsel, and also Curtis Schube.

4 JUDGE JORDAN: Thank you.

5 And there is one preliminary matter, that I  
6 understand the Office of Public Counsel had some  
7 documents that it was -- or which it was conferring with  
8 the other parties as far as admissibility.

9 Mr. Smith, would you like to explain what the  
10 parties have agreed to?

11 MR. SMITH: Yes, Judge. Thank you.

12 OPC has a number of records which it obtained  
13 through a business record search with the Secretary of  
14 State's Office, who is the agency that retains business  
15 records such as formation documents and/or reports,  
16 things like that.

17 OPC has pulled a number of these documents,  
18 and we'd like to offer them into evidence. They're  
19 uncertified copies.

20 In discussing with the company it is my  
21 understanding they do not object, but it occurs to me  
22 I'm not sure that I've asked Staff, which I probably --

23 MR. THOMPSON: Staff has no objection, Judge.

24 JUDGE JORDAN: Thank you, Counselor.

25 And Indian Hills has no objection to these

1 documents?

2 MR. COOPER: No, no objection to the  
3 documents.

4 JUDGE JORDAN: Thank you.

5 And are there any other preliminary matters  
6 before we resume the taking of testimony?

7 (No response.)

8 JUDGE JORDAN: I'm not hearing any.

9 MR. SMITH: Judge, would you prefer I hold  
10 off until offering these or --

11 JUDGE JORDAN: Well, it doesn't really matter  
12 to me. I think the -- I think that it is your case, and  
13 so you should present them when you think it will be the  
14 most effective.

15 MR. SMITH: Okay. Thank you.

16 JUDGE JORDAN: Whatever logical sequence you  
17 think will support their entry.

18 MR. SMITH: Okay. I'll hold off then. Thank  
19 you.

20 JUDGE JORDAN: All right.

21 We'll begin with the witness that was not set  
22 forth in the witness list as filed earlier last week but  
23 was announced yesterday during the hearing. And this  
24 will be on the topic of the EMS run repair tracker and  
25 perhaps other matters. This is Staff witness.

1 MS. MERS: Yes. Staff would like to call Kim  
2 Bolin to the stand.

3 JUDGE JORDAN: Please raise your right hand.  
4 (Witness sworn.)

5 JUDGE JORDAN: Please be seated.

6 And let's go ahead and have direct.

7 KIMBERLY BOLIN testified as follows:

8 DIRECT EXAMINATION BY MS. MERS:

9 Q. Can you please state and spell your name for  
10 the record?

11 A. My name is Kimberly Bolin. Bolin is spelled  
12 B-o-l-i-n.

13 Q. And you have not filed testimony in this  
14 case. Correct?

15 A. That is correct.

16 Q. But you did work to help prepare the EMS run  
17 for the nonunanimous stipulation and agreement and it's  
18 an EMS run?

19 A. Yes, I did.

20 Q. Okay. Do you want to just walk through the  
21 process of that just so everybody has an idea of what  
22 you did in this case?

23 A. I was notified of different matters we were  
24 willing to include in a stipulation, and I prepared the  
25 stipulation to reflect the positions in the stipulation.

1           **Q.           Okay. And is that EMS run true and accurate**  
2           **to the best of your knowledge and belief?**

3           A.           Yes, it is.

4                   MS. MERS: All right. Well, I would tender  
5           the witness for cross then.

6                   JUDGE JORDAN: Cross-examination from Indian  
7           Hills.

8                   MR. COOPER: No, thank you, Your Honor.

9                   JUDGE JORDAN: Cross-examination from the  
10          Office of Public Counsel.

11                  MR. SMITH: Yes. Thank you.

12          CROSS-EXAMINATION BY MR. SMITH:

13           **Q.           Ms. Bolin, you said just a second ago that**  
14           **you were -- I'm trying -- I'm going to paraphrase, but**  
15           **as I understand it, positions were given to you -- or**  
16           **decisions were given to you and from those decisions you**  
17           **did the calculations?**

18           A.           Yes.

19           **Q.           So you didn't actually make the decisions.**  
20           **Is that correct?**

21           A.           Staff --

22                   MS. MERS: I object to that question. I  
23           think that gets into settlement negotiations and the  
24           settlement process on what Staff did and that's  
25           confidential and privileged.

1 MR. SMITH: Yeah, it sounded like it was  
2 brought up in her direct testimony, so I was just trying  
3 to get clarification.

4 JUDGE JORDAN: And I didn't hear anything  
5 that really talked about settlement discussions amongst  
6 the parties. If I heard the question correctly, it  
7 addressed what happened with one party, not between  
8 parties. So I didn't hear anything about negotiations.  
9 So I'm overruling that objection.

10 BY MR. SMITH:

11 Q. I think you answered. Can you just repeat  
12 yourself?

13 A. Could you repeat the question?

14 Q. Sure.

15 A. I lost with all this.

16 Q. So I'm just trying to verify that you made  
17 the calculations but you did not make, I guess, the  
18 decisions leading to those calculations?

19 A. That is correct.

20 Q. Are you also able to speak to the first  
21 stipulation?

22 A. No, I am not.

23 Q. Okay. Based on your understanding of the  
24 second stipulation and through your calculations, the  
25 replacement plan -- I'm trying to figure out, in the



1 first stipulation there was a five-year time period and  
2 in the second stipulation I was unsure if that was  
3 incorporated into that, and so I was hoping to talk with  
4 someone about whether or not that's a part of the  
5 agreement or not.

6 A. The current stipulation does not say anything  
7 about the five-year plan. I would assume that if the  
8 five-year plan was set out in the first one and it's not  
9 addressed in this one, it still stands.

10 Q. Okay. Were you here yesterday when we were  
11 discussing -- when I was discussing through  
12 cross-examination with Mr. Macias and other witnesses  
13 about this two-way tracker?

14 A. I was in and out during different time  
15 periods of the hearing.

16 Q. I had been trying to figure out from those  
17 witnesses how that operated, and I have been directed to  
18 present those questions to you.

19 Could you explain what the \$90,000 base  
20 amounts comprise?

21 A. Staff calculated that base amount based on  
22 Staff's analyzed repair expense and then the amount we  
23 called initial repair leaks was added to that. It came  
24 up to roughly \$89,000. We rounded to 90.

25 Q. And how would the tracker operate in terms

1 of -- I'm not actually very familiar with trackers, but  
2 would it have, like, a start date and an end date?

3 A. It would have a start date when the rates go  
4 into effect in this case, and we would track the cost  
5 until the company comes in for their next rate case.

6 Q. So costs that were incurred prior to the  
7 effective date of the order would not be considered --

8 A. That's correct --

9 Q. -- for the tracker?

10 A. -- yes.

11 Q. And so the end date -- there isn't an end  
12 date per se, but if there is another rate case, it would  
13 be reexamined in the context of that rate case?

14 A. Yes.

15 Q. Are you able to talk to the modification of  
16 the loan agreement at all, about that it went from a  
17 20-year prepayment to a 10-year prepayment?

18 A. I'm not able to talk on that matter.

19 MR. SMITH: No further questions.

20 JUDGE JORDAN: Questions from the bench?

21 COMMISSIONER KENNEY: No questions. Thank  
22 you.

23 JUDGE JORDAN: I have a few questions and  
24 some will be elementary, so I hope you can be patient,  
25 and everyone else in the room, while I ask my simple-

1 minded questions.

2 QUESTIONS BY JUDGE JORDAN:

3 **Q. What's a tracker?**

4 A. A tracker would compare cost, actual cost the  
5 company incurs, to an amount set out in the tracker.

6 For example, in this one we've set a \$90,000  
7 amount as the tracker base. We would track what the  
8 company incurs in the future to that number.

9 **Q. Okay. Does that involve reporting amounts in**  
10 **any accounts not ordinarily used under the Uniform**  
11 **System of Accounting for water systems?**

12 A. No, it doesn't.

13 **Q. Okay. So basically it just sets a -- I think**  
14 **I've heard the word used baseline, a baseline?**

15 A. Uh-huh.

16 **Q. Okay. And what happens with amounts above or**  
17 **below that?**

18 A. That would be determined in the next rate  
19 case if it would be included as an amortization and  
20 included in rates in the next case, but that's for the  
21 next case to decide.

22 **Q. Okay. Thank you.**

23 **I've also heard some testimony about**  
24 **amortization, and since I have a mortgage I understand**  
25 **the understanding of amortization generally. It's**

1 **paying something off. Is that roughly correct?**

2 A. That would be -- yeah, the amortization  
3 period would be the returning of money over a certain  
4 time period, yes.

5 Q. Okay. As to those time periods, I think  
6 we've been through a few numbers in the filings. We've  
7 heard three years. We've heard five years. We've also  
8 heard annualization of certain amounts.

9 Where do any of those numbers come from?

10 A. Are you talking about the amortization  
11 period?

12 Q. Let's -- yes, let's focus on amortization  
13 periods. Are those set by some standards or is it just  
14 a number that sounds good to parties?

15 A. It's not a standard. It is -- several  
16 factors go into your decision on whether to use a three,  
17 four, five, ten-year amortization.

18 You look at when the company would possibly  
19 come in for the next rate case, the amount of expense  
20 that was incurred, how large of an impact it will have,  
21 what it was for. There is just very different -- very  
22 different factors that you take into consideration.

23 Q. Okay. So in the setting of rates and the  
24 determination of an amortization period, it's not like  
25 you look up in the Uniform System of Accounts and find a

1     **number that is correct for amortizing a certain amount?**

2           A.       That's correct. There is no guidelines on  
3     that.

4           **Q.       Instead that's a matter -- it sounds like a**  
5     **matter of accounting experience, knowledge and training?**

6           A.       Yes, it is, of ratemaking expense, knowledge  
7     and training.

8           **Q.       Okay. I'm trying to phrase one final**  
9     **question on this matter, which is how do you know when**  
10    **the number is right? Is there an accounting formula or**  
11    **description?**

12          A.       No, I don't -- it's really just you look at  
13    all of the factors --

14          **Q.       Okay.**

15          A.       -- you know.

16          **Q.       Okay. So really that would just come down to**  
17    **making sure that service is safe and adequate and the**  
18    **rates are just and reasonable. Is that correct?**

19          A.       Yes, that's correct.

20          **Q.       So that's the standard that we use when**  
21    **picking a number for amortization. Is that correct?**

22          A.       Yes, it is, reasonable and service would be  
23    just -- rates would be just and reasonable.

24                    JUDGE JORDAN: Okay. Thank you.

25                    Hang on just a second if you please.

1 I don't have any more questions for you.

2 Is there any recross from Indian Hills?

3 MR. COOPER: Yes, very briefly.

4 RECROSS-EXAMINATION BY MR. COOPER:

5 Q. You talked about the \$90,000 base amount.

6 That's an annual number. Correct?

7 A. That is correct.

8 Q. And you talked about -- you were asked by the  
9 judge what would happen going forward, and you kind of  
10 talked about it depends on whether the actual costs are  
11 above or below that 90,000. Correct?

12 A. Correct.

13 Q. But sort of the description of the tracker  
14 being two-way, the significance of that is that if costs  
15 are greater, then there is going to be the possibility  
16 for the company to recover those in the future.

17 Correct?

18 A. A possibility of recovering in the future.

19 Q. To be determined in a future rate case.

20 Correct?

21 A. Yes.

22 Q. And if they're below that, then there's the  
23 opportunity for those costs to go back to -- or to be --  
24 to the credit or to the benefit of the customer.

25 Correct?

1           A.           That is correct, the possibility of the  
2 credit being going back to the customer if the company  
3 does not spend the 90,000.

4           Q.           Okay. And would you agree with me that in  
5 the past trackers have been used more or less I guess  
6 depending upon the point in time, but in general that  
7 they've been used where the underlying costs are either  
8 highly variable such as, like, pensions and OPEBs, or in  
9 situations where we just don't -- where they're hard to  
10 determine, such as the vegetation management tracker?

11          A.           I would agree that they've been used for  
12 pensions and OPEBs, where the expenses fluctuate year to  
13 year, and they've also been used in vegetation  
14 management trackers where there is not much history of  
15 the expense to determine a normal level.

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

18                   JUDGE JORDAN: Thank you.

19                   I hate to go out of order but I need to  
20 clarify something for the record for the casual listener  
21 or reader of this transcript.

22                   OPEB, can you tell us about OPEB?

23                   THE WITNESS: Other Post Employment Benefits.

24                   JUDGE JORDAN: Thank you.

25                   And by the way, one issue arose yesterday

1 that we weren't able to get an answer for. It wasn't  
2 crucial or anything. EMS?

3 THE WITNESS: Exhibit Modeling System.

4 JUDGE JORDAN: Thank you.

5 Any redirect from Staff?

6 MS. MERS: I'm sorry. Did you --

7 MR. SMITH: No, I don't have any recross.

8 MS. MERS: Okay.

9 JUDGE JORDAN: Oh, I'm sorry. I omitted  
10 recross from Office of Public Counsel.

11 MR. SMITH: No problem.

12 JUDGE JORDAN: Thank you.

13 Sorry to skip you. Sorry about that.

14 MS. MERS: Just to clarify, because I think  
15 there's been a little bit of confusion about this issue.

16 REDIRECT EXAMINATION BY MS. MERS:

17 Q. The EMS run is Staff's position. Correct?

18 A. That is correct.

19 Q. And for most items the number in the EMS run  
20 is the same as what we have filed in our testimony  
21 presented in this case. Correct?

22 A. Correct.

23 Q. With the exception of ROE and this repair  
24 expense -- leak repair expense tracker. Correct?

25 A. That is true. That is correct.



1 Q. And we also to your knowledge incorporated  
2 the partial disposition agreement fully. Correct?

3 A. I believe so, yes, that is correct.

4 Q. Okay. And just as a last question for  
5 trackers.

6 The only way to collect or return any amount  
7 that has been tracked is in a rate case. Correct?

8 A. It is in the next rate case.

9 MR. SMITH: I guess -- if this is the last  
10 question, that's fine, but all these questions have been  
11 very leading, but that would be my objection going  
12 forward.

13 JUDGE JORDAN: Well, it is your witness. So  
14 please repeat the question.

15 BY MS. MERS:

16 Q. What's the mechanism -- or what's the way to  
17 collect a tracker going forward?

18 A. In the next case the tracker will be examined  
19 and then ratemaking will be determined in the next rate  
20 case.

21 MS. MERS: Nothing further.

22 JUDGE JORDAN: Then you may step down.

23 The next topic that the Commission will take  
24 testimony on will be the cost of capital, and we begin  
25 with Indian Hills' first witness.

1 MR. COOPER: Indian Hills would call  
2 Mr. D'Ascendis.

3 JUDGE JORDAN: Please raise your right hand.  
4 (Witness sworn.)

5 DYLAN D'ASCENDIS testified as follows:

6 DIRECT EXAMINATION BY MR. COOPER:

7 Q. Please state your name.

8 A. Dylan D'Ascendis, D-y-l-a-n,  
9 D-apostrophe-A-s-c-e-n-d-i-s.

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

12 A. I'm a Director at ScottMadden, Inc.

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

16 A. Yes.

17 Q. Is it your understanding that that testimony  
18 has been marked as Exhibits 10, 11 and 12 for  
19 identification?

20 A. Yes.

21 Q. Do you have any changes that you'd like to  
22 make to that testimony at this time?

23 A. No, I don't.

24 Q. If I were to ask you the questions which are  
25 contained in Exhibits 10, 11 and 12 today, would your

1     **answers be the same?**

2             A.       They would.

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

5             A.       Yes.

6                     MR. COOPER: Your Honor, I would offer  
7 Exhibits 10, 11 and 12 into evidence and tender the  
8 witness for cross-examination.

9                     JUDGE JORDAN: Indian Hills Exhibits 10, 11  
10 and 12 have been offered into evidence. Is there any  
11 objection to those exhibits?

12                    MR. SMITH: No objection.

13                    MS. MERS: (Shakes head.)

14                    JUDGE JORDAN: Having no objection,  
15 Exhibits 10, 11 and 12 are entered into the record.

16                    (EXHIBITS 10, 11 AND 12 WERE RECEIVED INTO  
17 EVIDENCE.)

18                    JUDGE JORDAN: And this witness is tendered  
19 for cross-examination.

20                    Any cross-examination from Staff?

21                    MR. THOMPSON: Thank you, Judge.

22 CROSS-EXAMINATION BY MR. THOMPSON:

23             **Q.       Mr. D'Ascendis, did I say that right?**

24             A.       Yeah, that's fine.

25             **Q.       Close enough?**

1 A. Yeah, it's either with or without the  
2 apostrophe, so we're good.

3 Q. Got you.

4 Mr. D'Ascendis, are you aware that there is a  
5 nonunanimous stipulation and agreement that has been  
6 entered into by Staff and the Company in this case?

7 A. I am.

8 Q. And are you familiar with the cost of capital  
9 terms in that agreement?

10 A. Yes.

11 Q. So the parties have -- should I say  
12 Staff and the Company have agreed to cost of debt of  
13 14 percent, is that correct, as far as you know?

14 A. Yes.

15 Q. And a return of equity of 12 percent?

16 A. Yes.

17 Q. And a capital structure of 35 percent equity  
18 to 65 percent debt?

19 A. Yes.

20 Q. Do you have an opinion as a professional  
21 cost-of-capital expert as to whether or not those  
22 figures are just and reasonable for this company?

23 A. I would say that settlements always have a  
24 give and take to them. Looking at overall cost of  
25 capital or WACC, W-A-C-C, you can see that my

1 recommendation of 14 percent thereabouts and Staff's  
2 12 percent WACC, the final number of 13.30 overall cost  
3 of capital looks like a compromise to me.

4 However, if this was to go to fully  
5 litigated, this being -- this being independent of  
6 everything else, I think that my number would be the  
7 most appropriate.

8 **Q. Okay. Let me see if I understand what you**  
9 **said.**

10 **If the Commission were to resolve this case**  
11 **and if the Commission's Order were to incorporate the**  
12 **numbers from this nonunanimous stipulation and agreement**  
13 **that I went over with you, in your professional opinion**  
14 **would that result be just and reasonable from a cost-of-**  
15 **capital perspective?**

16 MR. SMITH: I guess I'm going to object.  
17 That calls for a legal conclusion as to the just and  
18 reasonable. I believe that's a lawful -- a legal  
19 standard.

20 MR. THOMPSON: Well, in Missouri, Judge,  
21 witnesses can testify as to ultimate issues.

22 JUDGE JORDAN: A witness -- an expert witness  
23 may testify to an ultimate fact. An expert witness may  
24 testify to anything short of an abstract statement of  
25 law. So I'm going to overrule the objection.

1 THE WITNESS: I would say yes.

2 MR. THOMPSON: Thank you very much. No  
3 further questions.

4 JUDGE JORDAN: Cross-examination from the  
5 Office of Public Counsel?

6 MR. SMITH: Just a couple questions.

7 CROSS-EXAMINATION BY MR. SMITH:

8 Q. **Good morning, Mr. D'Ascendis.**

9 A. Good morning. How are you?

10 Q. **You were hired by the company. Correct?**

11 A. I was.

12 Q. **And what are they paying you?**

13 A. They pay my company.

14 Q. **What are they paying your company?**

15 A. I think they -- did they go over that  
16 yesterday?

17 Q. **I believe so but I wanted to hear from you.**

18 A. I'm not -- I'm not entirely sure what I  
19 usually -- I usually -- or our company usually charges a  
20 fixed fee for direct and then hourly after. I don't  
21 recall the direct fee. I think it was in the  
22 neighborhood of 15,000 or so, and then -- but I'd have  
23 to check to make sure. And my hourly rate was 295.

24 MR. SMITH: Okay. No further questions.

25 THE WITNESS: Thank you.

1 JUDGE JORDAN: Questions from the bench?

2 COMMISSIONER KENNEY: No questions,

3 Mr. D'Ascendis. Welcome to Missouri.

4 JUDGE JORDAN: Welcome indeed.

5 And I do have a few questions for you, and I  
6 hope I don't make you feel any less comfortable, but  
7 there are a few things that I have to nail down for my  
8 understanding.

9 QUESTIONS BY JUDGE JORDAN:

10 Q. On the premise that this case is being fully  
11 litigated, because it is, I'm going to ask a very  
12 simple-minded question, lay down a subpremise here,  
13 which is that I believe your original recommendation for  
14 return on equity was 15.2 percent. Is that right?

15 A. It is.

16 Q. And now it's 12 percent?

17 A. My recommendation remains 15.2. They -- they  
18 agreed to 12, but since it -- since it has a chance to  
19 fall through my recommendation would still be 5.20 -- or  
20 15.20.

21 Q. 15 point?

22 A. .20 percent, yes.

23 Q. Okay. As I've said, this case is being fully  
24 litigated. A stipulation between less than all of the  
25 parties binds nobody. It's not like we're taking a

1     **vote --**

2           A.     Right.

3           **Q.     -- amongst the parties.**

4                   **So when I draft a decision for the Commission**  
5 **to vote on, Mr. Cooper will be briefing the issue of**  
6 **return on equity and he will be informing us why**  
7 **12 percent is the number that the Commission should**  
8 **adopt. Can he get there from your testimony?**

9           A.     Yes, he could.

10          **Q.     Okay.**

11          A.     If you take a look at Subschedule DWD-1,  
12 page 2 of 2, my --

13                   JUDGE JORDAN: Hang on just a second.

14                   Is there a matter out here amongst the  
15 parties?

16                   MS. MERS: There was a spill but we're okay.

17                   JUDGE JORDAN: A spill.

18                   MR. THOMPSON: We're going to be okay, Judge.  
19 Thank you.

20                   JUDGE JORDAN: Counsel spilled. This is  
21 highly irregular.

22                   MR. THOMPSON: But not unexpected.

23                   JUDGE JORDAN: Accurately stated.

24                   Sorry to interrupt you.

25                   THE WITNESS: That's okay.



1           So if you look at Subschedule DWD-1, on  
2 line 5 my indicated common equity cost rate before  
3 adjustment for business risk is 10.35 percent. From  
4 there I make adjustments for financial risk and size  
5 risk.

6           As a part of the stipulation, the proposed  
7 stipulation, the equity ratio goes up from 22 and --  
8 22 -- approximately 22 percent to 35 percent. So that  
9 financial risk adjustment would go down considerably,  
10 leaving the size adjustment. Adding that would be  
11 around 12.70'ish or so.

12           Now, if you look -- or if you see the size  
13 risk adjustment of 2.38, that comes from Subschedule 9,  
14 and as you can see on that schedule, it's on the bottom,  
15 and the range of -- the range of adjustment runs from  
16 1.34 to 3 -- or 1.34 percent to 3.94 percent.

17           So any adjustment within that range would be  
18 reasonable to me, and then that's how you would get to  
19 the 12 percent.

20           **Q.       Okay. So if I understand the testimony that**  
21 **you just gave, much of the calculation is subject to**  
22 **variables that really represent a range --**

23           A.       Correct.

24           **Q.       -- a range of options?**

25           **And the Commission in looking at these**

1     **numbers may find one more appropriate or better**  
2     **supported by the evidence than another?**

3           A.       Sure.

4                   And if you want to be conservative, you could  
5     pick a lower -- a lower size adjustment if needed, but  
6     in my testimony it says that that size adjustment is  
7     appropriate.

8                   JUDGE JORDAN:   Okay.  I think that's all of  
9     the questions that I have.

10                   Does that generate any recross from Staff?

11                   MR. THOMPSON:  No, it does not.  Thank you,  
12     Judge.

13                   JUDGE JORDAN:  From the Office of the Public  
14     Counsel.

15                   MR. SMITH:  Yes.  I had a question about a  
16     range.

17                   THE WITNESS:  Sure.

18     REXCROSS-EXAMINATION BY MR. SMITH:

19           **Q.        Would that range then be the 10.35 to 15.2?**  
20     **Is that the range you're referring to?**

21           A.       No.  The range would be anywhere from -- so  
22     if you take -- like I said, I was trying to summarize  
23     it, so if you took -- so if you take a look at Line 6 of  
24     DWD -- Subschedule DWD-1, that's the financial risk  
25     adjustment.

1           The adjustment for -- if you use the  
2     hypothetical capital structure that's -- that's in the  
3     stipulation, the one between staff and the company, that  
4     goes from 2.49, 2.49 percent to 1 percent, right, so  
5     you're at 11.35.

6           And then on line 7, like I said, that comes  
7     from Schedule DWD-9, and that has a range from --

8           **Q.     Right. I'm just trying to figure out what**  
9     **your range is --**

10          A.     Oh.

11          **Q.     -- kind of a low and a high end.**

12          A.     Well, the low end would be --

13          **Q.     Is that the 10.35 number that is right there**  
14     **on your schedule?**

15          A.     No, it's not.

16          **Q.     That's not it?**

17          A.     No. That's an indication before adjustments  
18     for the extraordinary risk that Indian Hills faces,  
19     right, because they're significantly smaller and they're  
20     significantly higher leveraged than -- than what I used  
21     to derive my cost of -- common equity cost range.

22                 So then the range would be, okay, so if you  
23     take the 10.35 and you add the 1 percent for the  
24     financial risk adjustment, you're at 11.35.

25          **Q.     Okay.**

1           A.           The lowest -- the lowest size adjustment on  
2   Schedule -- Subschedule DWD-9 is 1.34. Right? So then  
3   you're at -- 12.69 would be the low end and the high end  
4   would be 11.35, plus 3.94, 15.29.

5           **Q.           Okay. So I guess in your testimony then your**  
6   **recommended equity was 15.2, so that would have been on**  
7   **the high end, right, of that range?**

8           A.           No. It would be the middle, because I used  
9   the average of the -- the stipulation changes a lot of  
10  moving parts when it comes to the financial -- the  
11  financial risk adjustment. So if they change the  
12  capital structure, the range changes with it.

13                        So there is no range that I recommended in  
14  the -- in my direct is 15.20. There is no range.

15           **Q.           There is no range?**

16           A.           There is no range.

17           **Q.           Okay. That clarifies --**

18           A.           Now, from what the Commissioners, the Judge  
19  can use on the record for their decision, they could use  
20  any number -- they could use any number --

21           **Q.           I didn't ask that question.**

22           A.           -- in DWD-8 or DWD-9.

23                        MR. SMITH: No further questions.

24                        JUDGE JORDAN: Any redirect from Indian  
25  Hills?

1 MR. COOPER: No redirect, Your Honor.

2 JUDGE JORDAN: Thank you. You may step down.

3 The next witness.

4 MR. COOPER: Just one moment before we move  
5 on, Judge.

6 JUDGE JORDAN: Certainly.

7 MR. COOPER: This gentleman is not scheduled  
8 to appear further in this hearing, and so I just want to  
9 ask that he be excused.

10 JUDGE JORDAN: Yes, he may be released.

11 THE WITNESS: Thank you.

12 MR. COOPER: We would call Mr. Thaman at this  
13 time.

14 JUDGE JORDAN: Please raise your right hand.  
15 (Witness sworn.)

16 JUDGE JORDAN: Thank you.

17 MICHAEL THAMAN testified as follows:

18 DIRECT EXAMINATION BY MR. COOPER:

19 Q. Please state your name.

20 A. My name is Michael Edwards Thaman,  
21 T-h-a-m-a-n.

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

24 A. I'm employed -- I'm a partner of Warson  
25 Capital Partners, St. Louis.

1           Q.       Have you caused to be prepared for the  
2 purposes of this proceeding certain direct and rebuttal  
3 testimony in question and answer form?

4           A.       Yes.

5           Q.       Is it your understanding that that testimony  
6 has been marked as Exhibits 13 and 14 for  
7 identification?

8           A.       Yes.

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

11          A.       No.

12          Q.       If I were to ask you the questions which are  
13 contained in Exhibits 13 and 14 today, would your  
14 answers be the same?

15          A.       Yes.

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

18          A.       Yes, they are.

19                 MR. COOPER: Your Honor, I would offer  
20 Exhibits 13 and 14 into evidence and tender the witness  
21 for cross-examination.

22                 JUDGE JORDAN: Exhibits 13 and 14 have been  
23 offered into evidence. Is there any objection?

24                 MR. SMITH: No objection.

25                 JUDGE JORDAN: No objections.

1 Exhibits 13 and 14 of Indian Hills are  
2 entered into the record.

3 (EXHIBITS 13 AND 14 WERE RECEIVED INTO  
4 EVIDENCE.)

5 JUDGE JORDAN: Cross-examination from Staff.

6 MR. THOMPSON: Yes, Judge. Thank you.

7 CROSS-EXAMINATION BY MR. THOMPSON:

8 **Q. Good morning, Mr. Thaman.**

9 A. Good morning.

10 **Q. Are you aware of the actual cost of debt for**  
11 **this company?**

12 A. Yes, I am.

13 **Q. And what is that figure?**

14 A. 14 percent.

15 **Q. As far as you know, are there any other**  
16 **sources of financing available to this company at a**  
17 **lower rate?**

18 A. No.

19 MR. THOMPSON: Thank you. I have no further  
20 questions.

21 JUDGE JORDAN: Cross-examination from the  
22 Office of Public Counsel.

23 MR. SMITH: Yes.

24 CROSS-EXAMINATION BY MR. SMITH:

25 **Q. Good morning.**

1 A. Good morning.

2 Q. **What is your hourly rate, Mr. Thaman?**

3 A. 650.

4 Q. **And how many times have you testified as an**  
5 **expert witness?**

6 A. Previously three.

7 Q. **Three times?**

8 A. Yes.

9 Q. **Okay. And in what matters were those?**

10 A. One was another rate case.

11 And let me clarify. When you say testify, I  
12 provided testimony but not in person.

13 Q. **Do you mean prefiled testimony?**

14 A. Direct and rebuttal.

15 Q. **Okay.**

16 A. And then others were civil matters having to  
17 do with the cost of capital and certain operations in  
18 preparation for raising capital.

19 Q. **I don't have the data request with me because**  
20 **I wasn't expecting that, but I thought that it had been**  
21 **disclosed to OPC that you only appeared as an expert**  
22 **witness in one case?**

23 A. I appeared as an expert witness twice in one  
24 case. That was Wolfe versus Harbison --

25 Q. **Okay.**



1 A. -- in California.

2 Q. So twice in one case?

3 A. Yes.

4 Q. That's fine. Thank you.

5 On page 2, lines 16 through 17 of your --  
6 it's your direct testimony. I should ask if you have  
7 that in front of you?

8 A. Page 2?

9 Q. Yeah. Do you have your direct testimony in  
10 front of you?

11 A. I do.

12 Q. Okay. And are you there?

13 A. I'm here.

14 Q. That indicates you've represented 100 client  
15 companies and raising debt or equity finance in both  
16 local and national markets. Is that correct?

17 A. That is correct.

18 Q. Are you registered as a broker, a  
19 broker-dealer agent, investment advisor or investment  
20 advisor representative?

21 A. No.

22 Q. Okay. Are you familiar with FINRA?

23 A. Yes.

24 Q. What is FINRA?

25 A. FINRA regulates the issuance of securities.

1 Q. And you do not have a registration with  
2 FINRA?

3 A. No. I work with another firm that represents  
4 us.

5 Q. And is that disclosed anywhere on your  
6 website?

7 A. Not on the website.

8 Q. Okay. Isn't it true that Series 79 is the  
9 registration requirement for investment -- for an  
10 investment banker with FINRA to get that registration?

11 A. That's correct.

12 Q. And you do not have that registration?

13 A. I've not needed it.

14 Q. And you don't need it because you partnered  
15 with this other outside party?

16 A. Correct.

17 Q. So when you say that you've transacted this  
18 debt and equity financing, you also mean not just -- not  
19 just you but perhaps a team of people?

20 A. Well, it's Warson.

21 Q. Okay. And is Warson -- they're not a broker  
22 or a broker-dealer agent --

23 A. No.

24 Q. -- correct?

25 Are you familiar with Fresh Start Venture,

1     **LLC?**

2           A.       Yes.

3           **Q.       Okay. And in a sentence or two who is Fresh**  
4     **Start Venture, LLC?**

5           A.       They are the owner, the parent company, of  
6     Indian Hills.

7           **Q.       Isn't it true -- or I'm sorry. You might be**  
8     **thinking of First Round.**

9           A.       I am, that's correct.

10          **Q.       I've gotten those confused too, so it's okay.**  
11                    **Isn't it true that Fresh Start Venture, LLC**  
12     **is the lender to the utility in this case?**

13          A.       Correct.

14          **Q.       To the best of your knowledge isn't it true**  
15     **that this lender is not regulated by the Office of the**  
16     **Comptroller of Currency?**

17          A.       I have no knowledge.

18          **Q.       To your knowledge they're not a federally**  
19     **chartered bank. Correct?**

20          A.       I don't know.

21          **Q.       You have no knowledge?**

22          A.       No knowledge.

23          **Q.       Do you have any knowledge as to whether this**  
24     **entity is regulated by Missouri Department of Insurance,**  
25     **Financial Institutions and Professional Registration as**

1     **a State chartered bank?**

2           A.       I do not.

3           **Q.       When lenders are not regulated, isn't that**  
4     **sometimes referred to as shadow banking?**

5                   **Have you heard that term?**

6           A.       I've not used that term.

7           **Q.       Okay. To your knowledge is Fresh Start**  
8     **Venture, LLC an unregulated vendor?**

9           A.       I have no knowledge.

10           MR. SMITH: No further questions.

11           JUDGE JORDAN: Questions from the bench for  
12     this witness?

13           COMMISSIONER COLEMAN: None. Thank you.

14           JUDGE JORDAN: Then any redirect?

15           MR. COOPER: Only briefly.

16     REDIRECT EXAMINATION BY MR. COOPER:

17           **Q.       You mentioned that you worked with someone**  
18     **else in the capacity as a broker. Who is that?**

19           A.       Patrick Capital.

20           **Q.       Who is registered --**

21           A.       They're a broker-dealer.

22           MR. COOPER: That's all of the questions I  
23     have, Your Honor.

24           JUDGE JORDAN: You may stand down.

25                   The next witness.

1 MR. COOPER: We will re-call Mr. Cox at this  
2 time.

3 The same question in regard to Mr. Thaman.  
4 He may be excused?

5 JUDGE JORDAN: Yes, he's released.

6 This witness was sworn in yesterday and is  
7 still under oath, so we can proceed with direct.

8 MR. COOPER: We would tender Mr. Cox for  
9 cross examination.

10 JUDGE JORDAN: Cross-examination from Staff?

11 MR. THOMPSON: No questions. Thank you,  
12 Judge.

13 JUDGE JORDAN: Cross-examination from the  
14 Office of Public Counsel?

15 MR. SMITH: Yes. Thank you.

16 At this time I also think it would be  
17 appropriate to move to offer those registrations -- or  
18 the filings with the Secretary of State because I think  
19 they'll be useful to this witness's testimony. And  
20 there are quite a few, so just bear with me on time.

21 JUDGE JORDAN: Okay. How many are there?

22 MR. SMITH: I'm not sure.

23 JUDGE JORDAN: Why don't you take a minute  
24 and count.

25 MR. SMITH: Okay. Thank you.

1 JUDGE JORDAN: Do you think we need to go off  
2 the record while you put these things together?

3 MR. SMITH: I think that would be worthwhile.

4 JUDGE JORDAN: Okay. Why don't we take ten  
5 minutes and we'll go off the record.

6 (A BREAK WAS TAKEN.)

7 (EXHIBITS 225 THROUGH 237 WERE MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)

9 JUDGE JORDAN: We are back on the record.  
10 And when we left we were in the  
11 cross-examination by the Office of Public Counsel of  
12 Indian Hills' witness Josiah Cox.

13 Office of Public Counsel.

14 MR. SMITH: Yes. Per an earlier agreement  
15 between the parties the Office of the Public Counsel is  
16 seeking to admit a variety of Secretary of State filings  
17 based on different companies of relevance to this case.  
18 Those filings extend through OPC Exhibits 225 through  
19 237. I'm going to go through each of those to clarify  
20 the record as to what each of those exhibits are.

21 Exhibit 225 is a filing with the Secretary of  
22 State related to the Indian Hills Utility Operating  
23 Company.

24 JUDGE JORDAN: And is that the one marked  
25 2007 Annual Registration Report?

1 MR. SMITH: It is, yes.

2 Exhibit 226 is a filing with the Missouri  
3 Secretary of State. It's an Articles of Incorporation  
4 for Indian Hills Utility Operating Company.

5 Exhibit 227 represents a Biennial  
6 Registration Report filed with the Missouri Secretary of  
7 State for American Bank of Missouri. It is labeled as  
8 Exhibit 227.

9 Exhibit 228 is another filing with the  
10 Missouri Secretary of State. It's an Articles of  
11 Incorporation for Central States Water Resources, Inc.

12 Exhibit No. 229 is an Articles of  
13 Incorporation filed with the Missouri Secretary of State  
14 for Indian Hills Utility Holding Company.

15 Exhibit 230 is another filing with the  
16 Missouri Secretary of State. It's the 2017 Annual  
17 Registration Report for Indian Hills Utility Holding  
18 Company, Inc.

19 Exhibit 231 is another filing with the  
20 Missouri Secretary of State's Office as the Articles of  
21 Organization. This is for First Round CSWR, LLC.

22 Exhibit No. 232 is another filing with the  
23 State of Missouri with the Secretary of State's Office.  
24 It's a Statement of Change of Registered Agent and/or  
25 Registered Office by a Foreign or Domestic For Profit or

1 Nonprofit Corporation or a Limited Liability Company.  
2 This relates to First Round CSWR, LLC. And that is  
3 Exhibit 232.

4 Exhibit 233 is an Articles of Incorporation  
5 filing with the Missouri Secretary of State for a  
6 company called Water Fund, LLC.

7 Exhibit 234 --

8 JUDGE JORDAN: Hang on just a second.

9 Sorry to interrupt. I do not have a copy of  
10 233.

11 MR. SMITH: Let me check if we have a spare  
12 copy.

13 COMMISSIONER KENNEY: You can have mine.

14 JUDGE JORDAN: Thank you.

15 I'm covered, Counselor.

16 MR. SMITH: Okay.

17 So to repeat, Exhibit 233 is an Articles of  
18 Organization filing with the Missouri Secretary of State  
19 related to a company called Water Fund, LLC.

20 Exhibit 234 is an Articles of Organization  
21 filing with the Missouri Secretary of State for a  
22 company called Swiss, LLC.

23 Exhibit 235 is an Articles of Organization  
24 filing with the Missouri Secretary of State for a  
25 limited liability company called GWSD, LLC.



1 Exhibit 236 is a Fresh Start Venture, LLC  
2 filing with the Nevada Secretary of State, and this  
3 document basically relates to registered agent  
4 information and business entity information.

5 Exhibit 237 is a 2017 Annual Registration  
6 Report for Central States Water Resources, Inc., and  
7 that is filed with the Missouri Secretary of State's  
8 Office.

9 And that completes the list of exhibits that  
10 OPC would like to admit -- or would like to offer for  
11 admission in this case.

12 JUDGE JORDAN: And are there any objections  
13 to the entry of these exhibits into the record?

14 MR. THOMPSON: No objection.

15 MR. COOPER: No, Your Honor.

16 JUDGE JORDAN: There being no objection,  
17 exhibits of the Office of Public Counsel Nos. 225, 226,  
18 227, 228, 229, 230, 231, 232, 233, 234, 235, 236 and 237  
19 are entered into the record.

20 (EXHIBITS 225 THROUGH 237 WERE RECEIVED INTO  
21 EVIDENCE.)

22 MR. SMITH: Thank you.

23 RECROSS-EXAMINATION BY MR. SMITH:

24 **Q. Mr. Cox, what is your role with First Round?**  
25 **What is your position?**

1           A.       So First Round is managed by Central States  
2 Water Resources, Inc, which I am the -- I am the  
3 President and majority shareholder, which is the manager  
4 of First Round CSWR, LLC.

5           **Q.       Can I ask, why did you choose the name First**  
6 **Round?**

7           A.       You know, I can't remember the exact reason  
8 why I picked First Round. That's been a number of years  
9 ago, and that involved a different investor group than  
10 we have currently.

11          **Q.       Could it -- it doesn't relate to the**  
12 **financing, though, does it, the first round of**  
13 **financing?**

14          A.       No, it does not.

15          **Q.       Okay. What does CSWR stand for?**

16          A.       Central States Water Resources, Inc.

17          **Q.       And I think you just mentioned that you had**  
18 **an ownership stake in First Round. Did you say that?**

19          A.       I didn't say that, but I do have an ownership  
20 stake in First Round.

21          **Q.       What is that stake?**

22          A.       It is 13 percent currently.

23          **Q.       And who owns the remaining ownership**  
24 **percentage?**

25          A.       GWSD, LLC.

1 Q. And who are the owners of GWSD, LLC?

2 A. The ultimate owners are Robert and David  
3 Glarner.

4 Q. Fresh Start Venture, LLC is the lender for  
5 the utility in this case. Correct?

6 A. That is correct.

7 Q. Do you know who the ultimate owner of that  
8 business is?

9 A. Yes. The ultimately owner is Robert and  
10 David Glarner.

11 Q. Isn't it also true that Robert and David  
12 Glarner are on the Board of Directors of this company?

13 A. On which company?

14 Q. On the company who has made the request for a  
15 rate increase, Indian Hills?

16 A. Sorry. Yes, they're on the Board of  
17 Directors of Indian Hills.

18 Q. And just to clarify for the record, do you  
19 mean the utility holding company or do you mean the  
20 operating company or are they on the Board of Directors  
21 of both of those?

22 A. They're on the Board of Directors of both of  
23 those.

24 Q. And aren't they also a manager of First Round  
25 CSWR, LLC?

1 A. They are not.

2 Q. Do you have those documents in front of you,  
3 Exhibits 225 through --

4 A. I do.

5 Q. -- 237?

6 If you would -- just a second.

7 Okay. Will you flip to Exhibit 232?

8 A. I have it.

9 Q. Okay. This exhibit -- can you describe this  
10 exhibit?

11 A. It looks -- it says the Statement of Change  
12 or Registered Agent and/or Registered Office.

13 Q. And who is the signator of that change and  
14 registered agent?

15 A. David Glarner.

16 Q. And what is David Glarner's title?

17 A. It says manager there.

18 Q. And what entity does it say he's a manager  
19 for?

20 A. First Round CSWR, LLC.

21 Q. Is that the same First Round CSWR, LLC that  
22 you said earlier he was not a manager for?

23 A. Yes, because we have an operating agreement  
24 that then supersedes the registered agent that then  
25 tells who the manager is.

1           Q.       **First Round CSWR is the manager, managed LLC,**  
2 **is it not?**

3           A.       That is correct.

4           Q.       **And in this document it says that Mr. David**  
5 **Glerner is the manager. You're saying that's superseded**  
6 **by an operating agreement?**

7           A.       That is correct.

8           Q.       **So if he's not the manager, what is his role?**  
9 **Is he a member?**

10          A.       He's a member of the LLC.

11          Q.       **Okay. So that title -- when that was filed**  
12 **was that a correct filing?**

13          A.       I was not a part of that filing.

14          Q.       **Okay. But you'd agree those two things**  
15 **conflict?**

16          A.       And I think I've previously provided you the  
17 operating agreement that is in place that shows that the  
18 manager is First Round -- the manager of First Round  
19 CSWR, LLC is Central States Water Resources, Inc.

20          Q.       **And that would conflict with the Secretary of**  
21 **State's records. Correct?**

22          A.       From March of 2015 perhaps.

23          Q.       **What is Central States Water Resources, Inc?**

24          A.       It is a management company.

25          Q.       **And it's a management company for which**

1     **entity?**

2           A.       For First Round CSWR, LLC.

3           **Q.       And aren't Mr. David and Mr. Robert Glarner**  
4     **on the Board of Directors of Central States Water**  
5     **Resources, Inc. as well?**

6           A.       They are.

7           **Q.       And what -- I can't remember if we**  
8     **established this. What is GWSD, LLC?**

9           A.       It is the investment entity that is the --  
10    holds ownership inside First Round CSWR, LLC.

11          **Q.       I guess we have a chart but I will avoid**  
12    **drawing pictures I think.**

13                    But as I understand the operating structure,  
14    there's Indian Hills operating company, which is wholly  
15    owned by Indian Hills Holding Company, which is owned by  
16    First Round CSWR, which is then in turn owned partly by  
17    GWSD, LLC and also partly owned by you. Does that sound  
18    right?

19          A.       That is correct.

20          **Q.       And at each stage, at each level -- or layer**  
21    **of that corporate structure -- or company structure, the**  
22    **Glarners are involved at some point either as Board of**  
23    **Directors or investors?**

24          A.       That is correct.

25          **Q.       Do you think starting a new subsidiary for**

1 each new acquisition might impact your chances of  
2 financing?

3 A. No. I mean, I do that so I can file a  
4 separate case associated with the assets on the ground  
5 of every single system.

6 Q. When you start a new subsidiary, you'd agree  
7 there is no financial history. Correct?

8 A. Correct.

9 Q. And when you start a new subsidiary, you'd  
10 agree there is no assets as well. Right?

11 A. That is correct.

12 Q. Why do you have so many companies?

13 A. We start a company every time we do an  
14 acquisition of a utility or a group of utility assets,  
15 and that way we can do a single rate case for each group  
16 of utilities. That way we can seek financing for each  
17 group of utilities. That's why it was started.

18 Q. It just seems -- even beyond that, though,  
19 there are additional companies above that and there are  
20 operating companies to operate the companies. Is there  
21 some sort of strategy or is this provided by legal  
22 counsel? And don't disclose anything that is  
23 privileged.

24 A. Yeah, the company structure was previously  
25 devised by legal counsel for liability reasons is the

1 way it was explained to me.

2 **Q. Okay. So if it's for liability reasons, did**  
3 **you ever think about for financing reasons?**

4 A. I don't understand your question. Could you  
5 rephrase it?

6 **Q. I guess could there be a benefit to having a**  
7 **combined structure for purposes of acquiring financing?**

8 A. I don't believe so.

9 **Q. So I understand, for this case you went out**  
10 **and sought other lenders. Is that true?**

11 A. That is correct. We approached multiple  
12 banks and other financial groups in an attempt to get  
13 financing for Indian Hills.

14 **Q. Okay. So when you went to these other**  
15 **banks -- was it you or was anyone else involved?**

16 A. It was me and Indian Hills.

17 **Q. Who from Indian Hills went with you?**

18 A. No one. I went to meet the banks myself.

19 **Q. Okay. So it was just you there?**

20 A. That is correct.

21 **Q. Were you authorized at the time you were**  
22 **meeting with these lenders to represent to banks that**  
23 **you would personally guarantee a loan?**

24 A. I did not represent that I would personally  
25 guarantee a loan.



1           **Q.           Okay. Did anyone else such as David Glarner**  
2           **or Robert Glarner represent to these lenders that you**  
3           **went to that they might be willing to personally**  
4           **guarantee a loan?**

5           A.           There were no nonutility assets that were  
6           offered to be collateralized for this loan.

7           **Q.           When you as a representative of Indian Hills**  
8           **approached those lenders, what limits or levels of money**  
9           **from the parent were you authorized to contribute to**  
10          **help finance the project costs?**

11          A.           Yeah. We were flexible on those terms. We  
12          were trying to get to a point to find out what level of  
13          equity or interest carrier or interest reserves the  
14          banks would want in order to try to get a financing deal  
15          done.

16          **Q.           And how flexible were you? What was your**  
17          **ability to contribute?**

18          A.           I mean, we -- we had a lot of flexibility. I  
19          think we were waiting to see -- get a proposal from the  
20          bank.

21                       For example, if you go to the -- you know,  
22          the answers I gave to you as part of the original  
23          financing case and you go back to Peoples Bank. Peoples  
24          Bank got kind of far down the line with us, and they  
25          presented a spreadsheet with potential interest

1 reserves, debt and equity ratios, all that, all that.

2 We agreed in principal to those if they were  
3 offered -- if they were willing to come back and do  
4 terms with us, and unfortunately after their  
5 conversations with -- they talked to Jim Busch, Water  
6 and Sewer, they did an internal analysis --

7 **Q. Mr. Cox, I appreciate that description but**  
8 **I'm trying to capture information here and move**  
9 **economically through my cross.**

10 What -- I guess what I'm trying to figure  
11 out, what -- did you have a limit on what amount your  
12 company, Indian Hills Utility, could contribute when  
13 they were going to seek a loan?

14 A. No, I did not have some prescribed limit, no.

15 **Q. Okay. Was a limit or anything like that ever**  
16 **conveyed to the lenders?**

17 A. I told the lenders that I am flexible and I  
18 wanted to get a deal done.

19 **Q. You told that to them verbally or you told**  
20 **that in writing?**

21 A. I think I may have put it in writing. I  
22 can't remember, but if I didn't I told them verbally.

23 I think that was demonstrated by the Peoples  
24 Bank spreadsheet where they asked for different limits  
25 and I agreed to those.

1           **Q.       At the point in which you were seeking loan**  
2           **opportunities, did you have any tangible assets for**  
3           **which could be security interest for a loan?**

4           A.       The security -- the assets for securitization  
5           were the utility assets themselves acting as collateral,  
6           and then if we were asked to contribute equity, that  
7           would have been the other assets we would contribute.

8           **Q.       So the security would be a future unbilled**  
9           **asset?**

10          A.       Future cash flows.

11          **Q.       Okay. All right.**

12                   **So at the time you would just have those**  
13           **future cash flows; there wasn't actually a tangible**  
14           **asset?**

15          A.       Yeah. Unfortunately with these small  
16           utilities there are almost no tangible assets, you know,  
17           at the time of acquisition, and then the existing cash  
18           flows are minimal. So what we try and do -- and what  
19           I've shown on those bank applications -- we do modeling  
20           on future cash flows to try and track investment. We  
21           try and use the stability of the regulatory framework to  
22           demonstrate that if we do investments in the way that  
23           are reasonable and prudent, that those investments will  
24           be recognized in future rates.

25          **Q.       When you say you're flexible with**

1     **capitalization, do you consider your purchase price and**  
2     **things like an engineering plan an aspect of the**  
3     **capitalization?**

4           A.       We -- we definitely tell the lenders that  
5     we're paying cash for all of those items.

6           **Q.       Okay. But a lender could not foreclose on an**  
7     **engineering plan. Correct?**

8           A.       That is correct, but they could foreclose on  
9     the assets where the engineering plan was done to  
10    construct those assets.

11          **Q.       Correct.**

12          A.       I think -- in fact, just to clarify, I think  
13    we would tell the lenders we'll be complete with the  
14    engineering plans before we ever close on the assets in  
15    order to give them confidence that all that will be done  
16    before they ever issue a loan. Because obviously the  
17    lender is not going to issue a loan until after we close  
18    on the assets.

19          **Q.       I'm going to reference a page in your**  
20    **testimony. I don't have it written down. I'm going to**  
21    **try and find it.**

22                    There was a point -- I thought there was a  
23    point in your testimony where you said that the company  
24    actually had never had any sort of -- they had never  
25    gotten to the point where capitalization was discussed,

1    **which would be different than what your testimony is**  
2    **today.**

3        A.       Terms were discussed is what I said.

4        **Q.       Okay. So there were no terms of**  
5    **capitalization discussed? Is that the clarifying point?**

6        A.       Maybe we're saying two different things.  
7    When I say terms, what a loan and interest rate loan  
8    would be loaned at, those kinds of things. When I say  
9    terms, that's what I meant.

10       **Q.       Let me see if I can find the testimony and**  
11    **that might help us out, if you'd just give me a second,**  
12    **or if you know where it is, that would be helpful.**

13       A.       Is it perhaps in response to a DR?

14       **Q.       It might be.**

15               MS. MERS: I hate to interrupt.

16               Could it be page 4 of the rebuttal testimony  
17    that we're referring to, perhaps lines 5 through 7?

18               MR. SMITH: Yes, that is exactly it.

19               Thank you.

20               THE WITNESS: So I think that I probably  
21    forgot this Peoples Bank application with the -- with  
22    the interest rate terms and the capitalization in there  
23    when I made that. In preparing for this testimony I dug  
24    all that back up, so that might be a mistake in my  
25    testimony there.

1 BY MR. SMITH:

2 Q. So with one lender then capital structure was  
3 discussed?

4 A. That is correct.

5 Q. Who do you bank with for Indian Hills and  
6 First Round CSWR?

7 A. We have two -- First Round CSWR we bank with  
8 American Bank, and for Indian Hills we have bank  
9 accounts both at Enterprise Bank and American Bank.

10 Q. And with those banks did Robert and David  
11 Glarner instruct you to bank with those facilities?

12 A. No. And I think I previously disclosed this.  
13 So we originally banked with Enterprise Bank  
14 going back from 2014. And, in fact, the relationship  
15 manager, the senior vice-president of Enterprise Bank,  
16 who I originally began banking with, is who introduced  
17 me to both Robert and David Glarner.

18 Q. Also, just to go back to a point. You said  
19 terms were discussed with People Bank. Is that correct?

20 A. No, not final interest terms, that kind of  
21 thing.

22 Q. Okay. So no interest rate was actually  
23 discussed?

24 A. I don't believe so. I can pull that up real  
25 quick and look at that. I have that in my testimony

1 here.

2 **Q. It's in your testimony --**

3 A. I mean, not my testimony. Excuse me. I've  
4 got it in my folder right here where I copied the . . .

5 **Q. I guess do you mind if I see that just**  
6 **before, because I haven't seen this?**

7 A. Yeah. This was part of the original  
8 financing case.

9 No, there were no debt terms in this.

10 **Q. Is this a confidential document?**

11 A. I don't know the answer to that question. I  
12 don't remember. I think it is a confidential document,  
13 but I can't remember if it was or not.

14 THE WITNESS: So, Dean, could you look at  
15 that?

16 I don't think it is.

17 MR. COOPER: I don't think we marked it  
18 though.

19 BY MR. SMITH:

20 **Q. So no terms -- no interest rate term was**  
21 **discussed?**

22 A. That is correct.

23 I can hand this to you if you --

24 **Q. I think -- that's really what I was trying to**  
25 **extract.**

1 A. Okay.

2 Q. Enterprise Bank you had mentioned earlier is  
3 one of the banks that Indian Hills and First Round CSWR  
4 bank with. Why do each of those entities have to have  
5 two banks?

6 A. First Round CSWR I don't believe have bank  
7 accounts at Enterprise Bank. Just Indian Hills.

8 Q. Okay. So Indian Hills has Enterprise and  
9 American Bank though?

10 A. That is correct.

11 Q. Why do you need two bank accounts?

12 A. Because American Bank doesn't offer lockbox  
13 services, imaging services that record bills and  
14 directly deposit in the accounts.

15 Q. What does American Bank offer that -- where  
16 you need to use them though?

17 A. So my -- my current investors have asked us  
18 to bank with American Bank in order to access financial  
19 control. Since they're passive investors and I am the  
20 only one that has check signator authority or to move  
21 money -- the ability to move money around in accounts, I  
22 am solely responsible for, you know, all of the cash  
23 movement as an owner/manager, and my investors use that  
24 bank as a check on that, so they have complete --  
25 complete ability to see through our transactions.



1           Q.       All right. So earlier when I had -- I  
2       thought I had asked you if Robert and David Glarner  
3       instructed you to bank with those facilities, your  
4       answer now is yes with respect to American Bank, no with  
5       respect to Enterprise Bank?

6           A.       That is correct.

7                    I was with Enterprise Bank before I even met  
8       David and Robert Glarner.

9           Q.       Well, isn't it true that another Glarner,  
10       Brian Glarner, works at Enterprise Bank?

11          A.       Correct. And he's who introduced me to  
12       Robert and David Glarner.

13          Q.       Exactly.

14          A.       That's exactly right.

15                    So I started with Enterprise Bank in '14 and  
16       was introduced to the Glarners from Enterprise Bank.

17                    MR. SMITH: So I had an exhibit to that but I  
18       think you answered it. I have another exhibit if you'd  
19       give me just a minute.

20                    I believe this exhibit will be confidential,  
21       but I'd like to show it to company counsel first.

22                    THE WITNESS: Thank you, sir.

23                    MR. SMITH: Yeah, we probably ought to mark  
24       this, 238.

25                    (HC EXHIBIT 238 WAS MARKED FOR IDENTIFICATION

1 BY THE REPORTER.)

2 MR. COOPER: I think it is. I think it fits  
3 the category of strategies, negotiation, those under the  
4 Commission's confidentiality agreement.

5 MR. SMITH: Yeah, I will not challenge that,  
6 but I think that -- I think we would probably have to  
7 discuss a confidential record. I think we would have to  
8 go offline for a second.

9 JUDGE JORDAN: Okay. So if I understand you  
10 have an exhibit that you've marked as No. 238?

11 MR. SMITH: Correct.

12 JUDGE JORDAN: And it is protected by the  
13 Commission's rule on confidentiality. Is that correct?

14 MR. SMITH: That is the Company's claim.

15 JUDGE JORDAN: Okay. And you're asking that  
16 we go in-camera and discuss this?

17 MR. SMITH: Yes.

18 JUDGE JORDAN: And we will do that.

19 (REPORTER'S NOTE: At this point an in-camera  
20 session was held which is contained in  
21 Volume 5, Page 436 through 440.)

22

23

24

25

1 (REPORTER'S NOTE: The proceedings resumed in  
2 open session.)

3 JUDGE JORDAN: And we are out of our  
4 in-camera session.

5 Counselor, you may resume.

6 BY MR. SMITH:

7 Q. We were discussing some of the lenders you  
8 went to. Do you remember OPC issued some data requests  
9 on that subject?

10 A. I believe if you could refer to me the data  
11 requests, I'll turn right to them.

12 MR. SMITH: And I'll actually hand them to  
13 you and have them marked as an exhibit too.

14 THE WITNESS: Okay. Thank you.

15 MR. SMITH: This will be 239.

16 (EXHIBIT 239 WAS MARKED FOR IDENTIFICATION BY  
17 THE REPORTER.)

18 MR. SMITH: This is also answers to those  
19 data requests which I did not see a confidential  
20 designation on them, but, again, if I'm missing  
21 something, I'll defer to company counsel when I present  
22 the answers to him.

23 MR. COOPER: Are these marked separately? Is  
24 that what we're doing?

25 MR. SMITH: Yes. This would be Exhibit 240.

1 THE WITNESS: Thank you, sir.

2 (EXHIBIT 240 WAS MARKED FOR IDENTIFICATION BY  
3 THE REPORTER.)

4 MR. SMITH: Before I lay a foundation does  
5 the company claim any confidentiality as to this?

6 MR. COOPER: No.

7 MR. SMITH: I didn't see any, so I wanted to  
8 make sure.

9 JUDGE JORDAN: And, Counselor, how are these  
10 marked again for the record?

11 MR. SMITH: Yes. So for the record OPC has  
12 handed to the witness and the court reporter and the  
13 parties in this case Exhibit 239, OPC Exhibit 240.

14 239, I guess I would lay the foundation with  
15 Mr. Cox.

16 BY MR. SMITH:

17 Q. Mr. Cox, what is Exhibit 239?

18 A. I'm sorry. I don't have markings on my  
19 paper. Which one are you talking about?

20 Q. The Public Counsel Fourth Set of Data  
21 Requests to Indian Hills.

22 A. I see data requests right here.

23 Q. And what -- did you receive these data  
24 requests?

25 A. Yes, we did.

1           **Q.       Okay. And does this appear to be a true and**  
2           **correct copy of those data requests that you received?**

3           A.       It does.

4           MR. SMITH: I would offer Exhibit -- OPC  
5           Exhibit 239.

6           JUDGE JORDAN: Any objection to Office of  
7           Public Counsel Exhibit 239?

8           MR. COOPER: No.

9           JUDGE JORDAN: Not hearing any, that exhibit  
10          is entered into the record.

11          (EXHIBIT 239 WAS RECEIVED INTO EVIDENCE.)

12          BY MR. SMITH:

13          **Q.       And Exhibit 240, that would be the answers to**  
14          **those data requests. Do you see those answers?**

15          A.       I do.

16          **Q.       And what I've given you, that copy, is**  
17          **that -- do you recognize that copy?**

18                   **Do you recognize these answers?**

19          A.       Yes, I believe these are the answers we  
20          supplied you.

21          **Q.       They appear to be a true and correct copy of**  
22          **your answers?**

23          A.       Yes, they do.

24          MR. SMITH: I would offer at this time OPC  
25          Exhibit 240.

1 JUDGE JORDAN: Objections?

2 MR. COOPER: (Shakes head.)

3 JUDGE JORDAN: That exhibit is entered into  
4 the record.

5 (EXHIBIT 240 WAS RECEIVED INTO EVIDENCE.)

6 MR. SMITH: Okay. I also wanted -- these  
7 answers relate back to a discussion we've already had,  
8 so I offered them at the end, so I actually don't have  
9 questions -- any additional questions as to that --

10 THE WITNESS: Okay.

11 MR. SMITH: -- at least not right now.

12 BY MR. SMITH:

13 Q. I want to move on to --

14 A. Can I set these aside, sir?

15 Q. Yes, please.

16 A. Okay.

17 Q. I want to discuss the loan that you actually  
18 have agreed to with Fresh Start Ventures. I understand  
19 that the utility hasn't been making payments on that  
20 loan?

21 A. We weren't required to make any payments to  
22 date.

23 Q. And you weren't required because of the  
24 original loan agreement?

25 A. The original loan agreement was made in the

1 same way with both Hillcrest and Raccoon Creek. The  
2 lending institution realizes that the utility can't  
3 afford to make loan payments until we have a rate that  
4 produces a cash flow that can support.

5 **Q. Isn't it true that you had to get a**  
6 **modification of that loan agreement in order to delay**  
7 **making payments on your loan?**

8 A. No, that is not true. We got a modification  
9 on the loan just to be sure that the paperwork was clear  
10 and correct.

11 **Q. Okay. So you're saying if I were to show you**  
12 **that original loan agreement and it had a start date,**  
13 **you think that start date would be the effective date of**  
14 **this order or did you need a modification perhaps to**  
15 **delay the start date?**

16 A. Perhaps I misunderstood your question. I  
17 thought you were saying that I missed the loan payment  
18 or I was required to make the loan payment.

19 **Q. Well, I am sort of saying that.**

20 **In the initial loan agreement isn't it true**  
21 **that there was a start date to make that loan payment?**  
22 **Right?**

23 A. There was an exhibit document attached to the  
24 loan.

25 **Q. I'm not sure if that answers my question.**

1                   **Was there a start date to make the loan**  
2 **payments?**

3           A.       I don't have the loan agreement in front of  
4 me.

5           Q.       **Okay. I have it actually. Unfortunately**  
6 **it's labeled confidential though. So I think -- how**  
7 **about this: I'll present it to you to refresh your**  
8 **memory and see if that refreshes your memory. Would**  
9 **that be acceptable?**

10          A.       Sure. That's great.

11          Q.       **Does that document, and the line I pointed**  
12 **to, perhaps refresh your memory on whether or not there**  
13 **was a start date for your loan?**

14          A.       So again I refer back. That's an exhibit. I  
15 just don't know in the loan document if the exhibit --  
16 if that means I had to start making payments.

17                   Obviously the lender knew making the loan  
18 that loan payments would not be able to happen until the  
19 rate case was finalized, which was true in Raccoon Creek  
20 and Hillcrest.

21          Q.       **So you're saying there was an exhibit with**  
22 **the start date but you didn't have to follow that**  
23 **exhibit is your interpretation of the loan?**

24          A.       I'm not very good at interpretation.

25          Q.       **I guess I'm not trying to be difficult, but**



1 I'm just trying to establish there was a modification  
2 for a reason. Right? The modification was to delay the  
3 start date of the loan? Or why did you have the  
4 modification if --

5 A. I made -- we made the modification just to be  
6 absolutely clear on all of the terms.

7 Q. Was one of the terms to be clear on the start  
8 date?

9 A. Yes --

10 Q. Okay.

11 A. -- sure.

12 Q. Thank you.

13 THE WITNESS: Can I hand this back to you?

14 MR. SMITH: You can hold on to it. I think  
15 I'll be offering it later on.

16 THE WITNESS: Okay.

17 BY MR. SMITH:

18 Q. Has interest been accruing in the meantime?

19 A. Yes, it has.

20 Q. Okay. What is the level of the interest that  
21 has accrued on that loan?

22 A. I don't -- which -- are you asking for a  
23 dollar figure?

24 Q. Yes.

25 A. I don't know the dollar figure.

1           **Q.       Are you expecting that to be passed on to**  
2 **ratepayers?**

3           A.       I don't know the rate treatment of that  
4 loan -- that interest capitalization.

5           **Q.       Are you seeking that it be applied and**  
6 **treated as principal to the loan or what is your**  
7 **understanding of how that will be dealt with?**

8           A.       In terms of the stipulation and agreement we  
9 have, it's not -- it's not in place.

10          **Q.       Okay. There is also a loan origination fee**  
11 **with this agreement. Isn't that true?**

12          A.       That is correct.

13          **Q.       Do you recall the percentage of the loan**  
14 **origination fee?**

15          A.       I believe it's 2 percent.

16          **Q.       I might have to refresh your memory here.**  
17 **If I were to tell you it was 5 percent, would**  
18 **that seem right, or would you want to take a look at**  
19 **that agreement?**

20          A.       Can I take a second to look at it, please?

21          **Q.       Yes, please.**

22          A.       Thank you.

23                    Could you help me and point me to where the  
24 section is if you know it?

25                    JUDGE JORDAN: Counselor, while the witness

1 is thumbing through that exhibit, have you got an extra  
2 copy to share with the bench?

3 MR. SMITH: Yes. I was planning on offering  
4 this anyway. Maybe I'll pass it around and mark it and  
5 go ahead and offer it.

6 JUDGE JORDAN: Why don't we do that. Why  
7 don't we do that now while the witness is looking  
8 through that document.

9 I believe we're up to Office of Public  
10 Council Exhibit No. 241?

11 MR. SMITH: Yes.

12 (HC EXHIBIT 241 WAS MARKED FOR IDENTIFICATION  
13 BY THE REPORTER.)

14 JUDGE JORDAN: And I'm looking at a document  
15 entitled Construction Loan and Security Agreement.

16 THE COURT REPORTER: Is this HC?

17 MR. SMITH: I believe this would be  
18 confidential according to the Company's designation.

19 THE WITNESS: I apologize but I can't find  
20 the section you're referring to. If you can do it for  
21 me, that would be great.

22 MR. SMITH: Did I pass out all my copies? I  
23 may have.

24 JUDGE JORDAN: I'll ask counsel for Indian  
25 Hills. I believe this -- do you want confidential -- is

1 this subject to the Commission's confidentiality  
2 regulation?

3 MR. COOPER: We believe that it is, yes. We  
4 would seek that it be marked confidential.

5 JUDGE JORDAN: All right then.

6 And this is being offered into evidence, is  
7 it?

8 MR. SMITH: Yes. We will offer this as OPC  
9 Exhibit 241.

10 JUDGE JORDAN: Is there any objection?

11 MR. COOPER: No.

12 JUDGE JORDAN: Go ahead.

13 MR. COOPER. No. Go ahead.

14 JUDGE JORDAN: Go ahead, Counselor, and  
15 finish your sentence.

16 MR. COOPER: I was jumping ahead to the next  
17 subject, so I apologize.

18 JUDGE JORDAN: Very good.

19 And not hearing any objection to Office of  
20 Public Counsel Exhibit No. 241 we're marking  
21 confidential --

22 MR. THOMPSON: No objection, Judge.

23 JUDGE JORDAN: -- then we will enter that  
24 exhibit into the record.

25 (HC EXHIBIT 241 WAS RECEIVED INTO EVIDENCE.)

1 MR. COOPER: To help this process, I think on  
2 page 6 of the loan agreement there's a definition of  
3 origination fee about two-thirds of the way down.

4 JUDGE JORDAN: I see that.

5 Counselor, do we need to go in-camera to  
6 discuss this?

7 MR. COOPER: No, I think that's fine. In  
8 fact, I think we've already discussed this number  
9 anyway, so . . .

10 BY MR. SMITH:

11 Q. Do you see that?

12 A. I do.

13 Q. And what is that number?

14 A. 2 percent.

15 Q. It is 2 percent.

16 Okay. Who is the loan originator?

17 A. That would be Fresh Start Ventures.

18 Q. So they're the lender and the loan  
19 originator?

20 A. That is correct.

21 Q. What is that loan origination fee used for to  
22 your knowledge?

23 A. I do not know what that fee is used for.

24 Q. And has that loan origination fee been paid?

25 A. It has not. It's been capitalized as part of

1 the loan.

2 **Q. And was that part of your modification that**  
3 **you had made?**

4 A. No, I don't believe it was.

5 It's been the practice on each of the loans  
6 we have done to capitalize that.

7 **Q. So I guess if there was a loan origination**  
8 **fee that hasn't been paid and it's not subject to**  
9 **modification, I guess I'm wondering, has there been any**  
10 **other written agreement where the loan -- that that's**  
11 **been waived or that's been -- that you say it's been**  
12 **capitalized, was that captured in any sort of written**  
13 **agreement or was that just more of a verbal**  
14 **understanding or --**

15 A. I haven't read through the document.

16 That's been the practice. We've capitalized  
17 that loan origination fee.

18 **Q. And the acquisition case, WO-2016-0045, you**  
19 **recall that the Commission had ordered you to file not**  
20 **only this loan agreement but any modifications to that**  
21 **agreement?**

22 A. I do remember that now.

23 **Q. And did that happen?**

24 A. Both the Raccoon Creek and the Hillcrest  
25 loans were filed as part of those rate cases. I do not

1 know exactly -- I don't think we filed it. I don't  
2 think we filed the loan -- the loan right after we  
3 closed it.

4 **Q. So --**

5 A. And I think that the -- I guess the earliest  
6 I can find record of the Staff and OPC being in  
7 possession of the Indian Hills loan would be in the  
8 Elm Hills acquisition case. That would have been  
9 February 22nd. It was DR 09.2.

10 **Q. Of the loan or the modification to the loan?**

11 A. Of the loan.

12 **Q. Okay. So the modification of the loan**  
13 **wasn't -- OPC had to do some discovery to find that,**  
14 **didn't they?**

15 A. Define what?

16 **Q. To acquire the modification agreement**  
17 **document.**

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

19 **Q. You don't remember receiving discovery from**  
20 **us to produce this modification or to produce this loan**  
21 **agreement?**

22 A. I believe I've got DRs that I -- answers. Is  
23 that what you're saying?

24 **Q. Yes.**

25 A. No. Nonattorney discovery --

1           **Q.       I'm sorry. I probably should have used a**  
2           **different term.**

3                   **So I guess why wasn't the Commission's order**  
4           **followed?**

5           A.       That was an oversight on our part. We were  
6           turning in tons of documents at the time in two  
7           different rate cases, an acquisition case. I mean,  
8           obviously we filed -- we closed on all these systems  
9           when we closed on them and we did not follow up on that.

10          **Q.       Okay. Is that something -- I mean, you agree**  
11          **it's important to follow what the Commission has**  
12          **ordered. Right?**

13          A.       Absolutely, and that was an oversight on our  
14          part. And in Elm Hills we immediately filed the  
15          financing documents afterwards.

16          **Q.       So on a going-forward basis you will be**  
17          **filing those documents?**

18          A.       Absolutely. We'll be -- we'll be right on  
19          that, sir.

20          **Q.       OPC also received another version of this**  
21          **loan that had some missing page numbers. Do you recall**  
22          **that?**

23          A.       I don't recall that.

24                   MR. SMITH: I'm going to enter this in the  
25          record because there is also additional information that



1 was also included.

2 THE WITNESS: Is that the loan document that  
3 has all of the title work and all of that kind of good  
4 stuff in it?

5 MR. SMITH: Yes.

6 THE WITNESS: Okay. Got it.

7 MR. SMITH: This will be 242, as well as 243  
8 I believe.

9 THE WITNESS: Do you want me to hold on to  
10 this?

11 MR. SMITH: Yes.

12 (EXHIBIT 242 AND HC EXHIBIT 243 WERE MARKED  
13 FOR IDENTIFICATION BY THE REPORTER.)

14 BY MR. SMITH:

15 **Q. I've handed you, the parties, the court**  
16 **reporter and the Commission two exhibits, 242 and 243.**

17 **Do you have those in front of you?**

18 A. I have two documents in front of me, correct.

19 **Q. Okay. And what are those two documents?**

20 A. One says it's a Missouri Office of Public  
21 Counsel Data Request and the other says Construction  
22 Loan and Security Agreement.

23 **Q. Okay. Is that an answer to -- is that**  
24 **construction agreement an answer to those data requests?**

25 A. Can you point out the data requests you're

1 mentioning?

2 Q. I'm wondering if I gave away my copies. I  
3 think I did.

4 I think it's around 5 -- there's -- I think  
5 it's 1107 actually, and I think there's a subpart of 5  
6 if my memory is correct.

7 A. I think I see that.

8 Q. Okay. Does that look -- does that second  
9 document look to be an answer to that first document?

10 A. I guess -- I believe that this would answer  
11 that question. Is that what you're asking me?

12 Q. Correct.

13 A. Yes.

14 Q. Did you produce the answer to this, to the  
15 best of your knowledge, or did counsel for you -- for  
16 Indian Hills produce this?

17 A. There are two different parts here, so I  
18 don't know which part you're talking about. There's a  
19 subpart in the back and then there's a front part that's  
20 just the loan agreement.

21 Q. And you would agree that was all one big PDF?

22 A. Okay. I believe you.

23 Q. Okay. Do the data requests and the documents  
24 responding to the data request appear to be a true and  
25 correct copy?

1 A. Yes, they do.

2 MR. SMITH: Okay. At this time I'd offer to  
3 admit OPC Exhibit 242 and 243.

4 JUDGE JORDAN: Any objection to Office of  
5 Public Counsel Exhibit No. 242, which is the set of data  
6 requests, and 243 is entitled Construction Loan and  
7 Security Agreement?

8 MR. COOPER: No, other than I think 243 at  
9 least as to its terms should be confidential, the same  
10 way we marked 241 I guess.

11 MR. SMITH: And I would agree with that. I  
12 would agree that the Company claims confidentiality as  
13 to that document.

14 JUDGE JORDAN: Office of Public Counsel  
15 Exhibit 242 is entered into the record. Office of  
16 Public Counsel Exhibit 243 is entered into the record as  
17 a confidential document, subject to the Commission's  
18 rule on confidentiality.

19 (EXHIBIT 242 AND HC EXHIBIT 243 WERE RECEIVED  
20 INTO EVIDENCE.)

21 BY MR. SMITH:

22 **Q. Does Fresh Start Venture, LLC obtain its**  
23 **financing through American Bank Missouri?**

24 A. I have no idea where Fresh Starts get their  
25 money besides I know that it comes ultimately from the

1 Glarners.

2 Q. And that loan agreement in front of you has  
3 some missing pages. Correct?

4 A. You'll have to point those out to me.

5 Q. I think it's the even or odd numbers.

6 A. Oh, even numbers. I remember this. We had  
7 to re-send it because it printed incorrectly.

8 Q. And we had to re-request that.

9 If you'd flip beyond the loan agreement  
10 into -- and past some of the schedules, there should be  
11 kind of a financing statement. And I don't have the  
12 agreement. The next -- the next one.

13 Yes. If you would read for the record what  
14 that document is.

15 MR. SMITH: Well, I guess this is  
16 confidential. That would probably need to be in-camera.

17 JUDGE JORDAN: You want him to read part of  
18 the contract into the record?

19 MR. SMITH: This is actually not part of the  
20 contract itself. But, yes, I would.

21 JUDGE JORDAN: Okay. It's not part of the  
22 contract but it's part of 243 which is confidential. Is  
23 that correct?

24 MR. SMITH: Yes.

25 JUDGE JORDAN: Okay. Then we will go in-

1 camera.

2 (REPORTER'S NOTE: At this point an in-camera  
3 session was held, which is contained in Volume 5,  
4 Page 460 through 462.)

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1 (REPORTER'S NOTE: The proceedings resumed in  
2 open session.)

3 JUDGE JORDAN: I have unmuted and we are out  
4 of the in-camera session.

5 THE WITNESS: Sir, can I put this down?

6 MR. SMITH: You can.

7 THE WITNESS: Both of these things, just to  
8 make sure?

9 MR. SMITH: Yes.

10 BY MR. SMITH:

11 Q. There was an item that OPC marked as  
12 Exhibit -- OPC Exhibit 222 earlier, not today but  
13 yesterday, and we held off on offering it until this  
14 time when the foundation could be laid by Mr. Cox.

15 This constitutes data requests sent and  
16 responded to Nos. -- OPC Data Requests 1 through 29. Do  
17 you have a copy of that?

18 A. Your Data Requests 1 through 29?

19 Q. Yes.

20 A. I believe I do.

21 Q. Can you go to that, OPC 222, for the other  
22 parties?

23 A. I have those here.

24 Q. Are you the -- I understand Mr. Macias  
25 answered some of these. He answered -- was it OPC Data

1     **Request 9 and I think it was 25? Does that sound right?**

2           A.     We previously provided it to you. That  
3     sounds right.

4           **Q.     Okay. You answered the rest of those**  
5     **questions.**

6           A.     I believe so. If we indicated so, then that  
7     would be the answer, yes.

8           **Q.     Can you review this document to make sure**  
9     **that it's a true and correct copy?**

10          A.     I don't have your document. I have my copy.

11          **Q.     Do you --**

12          A.     I mean, I'm looking at the data request and  
13     the answers, so . . .

14          **Q.     Would you review those and they appear to be**  
15     **your answers?**

16          A.     I have my answers.

17                   MR. SMITH: Okay. I would move to offer OPC  
18     Exhibit 222 at this time.

19                   JUDGE JORDAN: Objections to OPC 222?

20                   MR. COOPER: No.

21                   MR. THOMPSON: Judge?

22                   JUDGE JORDAN: Counsel.

23                   MR. THOMPSON: Go ahead.

24                   MR. COOPER: You go ahead then.

25                   MR. THOMPSON: Oh, okay.

1 I was just going to say that I don't think  
2 the witness has ever actually examined the version that  
3 counsel has, so I don't know that he can be sure it's  
4 the same thing that he has looked at and thinks is the  
5 same thing.

6 MR. SMITH: Out of an abundance of caution I  
7 will present it to the witness.

8 THE WITNESS: I hate to do this but can I use  
9 the men's room?

10 MR. SMITH: This would be a good time to take  
11 a break.

12 JUDGE JORDAN: Let's take a break for ten  
13 minutes.

14 (A BREAK WAS TAKEN.)

15 JUDGE JORDAN: We're back on the record and  
16 resuming the cross-examination of Mr. Josiah Cox by the  
17 Office of the Public Counsel, and I believe the Public  
18 Counsel was laying a foundation for an exhibit.

19 MR. SMITH: Yes.

20 And while we were off the record there was an  
21 agreement as to the foundation of what had been  
22 previously marked as OPC Exhibit 222, and so we would  
23 offer that based on that agreement.

24 JUDGE JORDAN: And that's been stipulated as  
25 to admissibility. Is that correct? Very good then.



1                   That exhibit, Office of Public Counsel  
2 No. 222, will be entered into the record.

3                   (EXHIBIT 222 WAS RECEIVED INTO EVIDENCE.)

4                   MR. SMITH: And no further questions.

5                   THE WITNESS: Okay.

6                   JUDGE JORDAN: All right. Then questions  
7 from the bench for this witness?

8                   COMMISSIONER STOLL: No questions.

9                   COMMISSIONER KENNEY: No questions.

10                  JUDGE JORDAN: I have one matter that I'd  
11 like to inquire into and it is with regard to the cost  
12 of debt for the Applicant Indian Hills.

13                  QUESTIONS BY JUDGE JORDAN:

14                  **Q. I want to direct your attention to an**  
15 **exhibit, some prefiled testimony that -- actually this**  
16 **is a schedule that is attached to the -- this is the**  
17 **surrebuttal testimony and schedules of Greg R. Meyer.**

18                  JUDGE JORDAN: Maybe counsel can dig that out  
19 for you.

20                  THE WITNESS: I have it.

21                  JUDGE JORDAN: You have it. Very good.

22                  THE WITNESS: I do.

23                  JUDGE JORDAN: I was going to offer you mine.

24                  BY JUDGE JORDAN:

25                  **Q. I'm just looking at what happens to be the**

1 very back page, and this is a schedule of cost for debt  
2 for other small water companies, and that is in  
3 foundation for another of my very simple-minded  
4 questions.

5 If you'll take a look you'll see No. 3,  
6 Hillcrest Utility Operating Utility Company,  
7 Incorporated, debt cost 14 percent. Do you see that?

8 A. Yes, sir.

9 Q. And you see the other numbers in that column?

10 A. I do.

11 Q. Okay. They're all a lot lower, aren't they?

12 A. They are a lot lower.

13 Q. Okay. My question is simply this: What do  
14 these other companies have that you do not?

15 A. Yeah. I think every one of these companies  
16 has a story. Right? And, in fact, I know these  
17 companies very well, and I have a whole document I put  
18 together to talk about every single one of these  
19 companies.

20 So, for example, if you go to Company No. 2  
21 on that, this Roy-L Utilities, so they have a debt cost  
22 there of 5 percent. Actually the total debt they have  
23 against that company per their annual report is \$75,000.

24 They're actually in contract to sell to us as  
25 part of our Confluence Rivers acquisition case, because

1 they really have 2 or \$300,000 of improvements that need  
2 to be done, and that debt is actually collateralized by  
3 nonutility assets.

4 So it's a great example of someone who we  
5 don't believe has the wherewithal to do the improvements  
6 required to bring that system into compliance. You can  
7 go down the list there and look at -- you know, you've  
8 got Valley Woods, Taney County, River Fork, Morebend,  
9 Midland Water. I don't know how to pronounce that.  
10 Bilyeu Ridge perhaps.

11 Those -- all those companies are part of  
12 Ozark International, and that's a company that is  
13 actually under contract to Liberty Utilities to be sold.

14 Their debt is, according to the last annual  
15 filing, was \$224,000. We estimate there is 500,000 to  
16 \$1.5 million of improvements that need to be done to  
17 that system. And again, that debt is collateralized by  
18 nonutility assets. So another example. And that  
19 utility has actually got a history of environmental  
20 violations, long boil orders, that kind of stuff.

21 So these are all great examples of companies  
22 that actually need non-- they need new debt. They need  
23 debt that is collateralized by utility assets, and they  
24 don't have access to it.

25 I mean, you can go down the list and look

1 at -- he's got Rogue Creek listed here. That's a  
2 receivership system. It's actually under contract to  
3 Missouri American Water. They list that under this but,  
4 you know, I've spoken to the receiver Dale Johansen.  
5 There is no debt in that system because the receivership  
6 system is not able to get debt.

7 Or go on to 17, which is Gladlo Water & Sewer  
8 Company. That's actually under contract to us right now  
9 as part of Confluence Rivers. That is a receivership  
10 system. That debt is an applied debt. That's actually  
11 contractor debt. That is only \$12,272 and that's owed  
12 to a pump contractor, because the company doesn't have  
13 enough money even to pay their contractor debt.

14 So, you know, you can go on down to  
15 W.P.C. Sewer Company is actually a company we acquired  
16 inside Raccoon Creek. The debt that was attached to  
17 that company was \$25,000, and, you know, we had to do at  
18 least \$350,000 of work to that system in order to bring  
19 it to minimum MDNR requirements.

20 So each of these -- each of these utilities  
21 have a very low debt number in terms of total dollars.  
22 They have a need for capitalization, and so those debt  
23 costs -- and most of these debt costs as far as I can  
24 tell are collateralized by nonutility assets.

25 **Q. Okay. What I'm hearing then, if I can**

1 **summarize in layman's terms, which in the world of**  
2 **finance is all I am, the reason that so many of these**  
3 **debt costs are so much lower is because they're not**  
4 **borrowing enough money?**

5 A. That is correct. And probably more than that  
6 they don't have the wherewithal to borrow the money that  
7 is required to bring these systems in compliance for the  
8 systems that I know of these. So I know a number of  
9 these I can answer to. Some of these I don't know.

10 **Q. So they simply don't have access to enough**  
11 **debt?**

12 A. That is correct. They don't have access to  
13 capital in my opinion.

14 **Q. You also mentioned that some of them were**  
15 **collateralized, secured, by nonutility assets. Is that**  
16 **correct?**

17 A. I would say every single one on there besides  
18 maybe 4 or 5 are collateralized by nonutility assets,  
19 the ones that I know of, because I've spoken to the  
20 owners over the last three years.

21 JUDGE JORDAN: Does that raise any questions  
22 from the bench?

23 COMMISSIONER KENNEY: Yes, it does. Thank  
24 you, Judge.

25 QUESTIONS BY COMMISSIONER KENNEY:

1           **Q.        Would you say that those companies that you**  
2           **were discussing also are a lot like Indian Hills that**  
3           **have low rates and haven't had much done to them in**  
4           **years?**

5           A.        Absolutely. Most of these companies have  
6           artificially low rates and have Missouri Department of  
7           Natural Resources either enforcement or compliance  
8           issues, that they have to reinvest and they've not been  
9           able to do it.

10          **Q.        But they have no access to gain money to do**  
11          **it and so they keep their rates artificially low?**

12          A.        That would be my opinion of the ones I've  
13          spoken to.

14                    COMMISSIONER KENNEY: That's what I was  
15          asking, your opinion.

16                    All right. Thank you.

17                    JUDGE JORDAN: Any other questions from the  
18          bench?

19                    Recross from Staff?

20                    MR. THOMPSON: I think not. Thank you,  
21          Judge.

22                    JUDGE JORDAN: Thank you.

23                    Recross from OPC?

24                    MR. SMITH: I don't think so. Thank you.

25                    JUDGE JORDAN: Thank you.

1 And any redirect?

2 MR. COOPER: Yes, Your Honor.

3 It will take me just a second to get  
4 organized.

5 I'd like to mark an exhibit at this point in  
6 time. I believe it's going to be Exhibit 15, and this  
7 will be a table of financing.

8 (EXHIBIT NO. 15 WAS MARKED FOR IDENTIFICATION  
9 BY THE COURT REPORTER.)

10 MR. COOPER: Are you ready to proceed,  
11 Your Honor?

12 JUDGE JORDAN: Yes.

13 REDIRECT EXAMINATION

14 BY MR. COOPER:

15 Q. Mr. Cox, you have in front of you what has  
16 been marked as Exhibit 15 for identification?

17 A. I do.

18 Q. I believe in answer to a question from the  
19 Judge you referred to some work you had done in regard  
20 to those loans that were listed in Mr. Meyer's  
21 testimony. Is that correct?

22 A. That is correct.

23 Q. Is this that -- the table, the compilation of  
24 that work?

25 A. This is the table.

1           **Q.           And in preparing this what types of things**  
2           **did you look at?**

3           A.           I looked at the annual reports for each one  
4           of these companies, and then I relied on -- we've spoken  
5           to a number of these companies over the last three  
6           years, so I have information from conversations from the  
7           companies directly.

8           **Q.           And then investigation of costs of**  
9           **construction and that sort of thing on a going-forward**  
10          **basis that you have done?**

11          A.           Yeah, that's correct. And those are from  
12          tours of the system at various times over the last  
13          number of years.

14          **Q.           And what you've reflected in here is again**  
15          **the company name, the case name. What other items have**  
16          **you reflected in there?**

17          A.           I have the debt cost as it was portrayed in  
18          the annual report. I have a total debt as it was  
19          reported in the most recent annual report available.  
20          There are a number of these companies that have since  
21          sold, so I had to go back to previous years.

22                        For example, like, Lake Region was sold to a  
23          water and sewer district. You know, House Springs was  
24          sold to a sewer district. So I had to go back to  
25          previous annual reports to get those numbers.



1           **Q.           Take us on across the top then.**

2           A.           And then I have the debt source. So that is  
3 listed who the bank -- who the debt is from. You'll  
4 notice a couple of these companies are listed over and  
5 over again.

6                       So, for example, Valley Woods. So Nos. 5, 6,  
7 7, 8, 9 and 10 on the far left column and No. 25,  
8 they're all the same family of companies. So I list the  
9 bank who loaned the money at the very bottom -- the very  
10 bottom row, Empire Bank, and then Ozark International  
11 and all of those Ozark Internationals are part of the  
12 same debt package.

13                      And then we have collateralized by nonutility  
14 assets. That's because I have spoken to the owner and I  
15 know that they have collateralized, or I don't know, or  
16 I've called the receiver to find out where that debt  
17 came from.

18                      And they have a column enforcement. So they  
19 have -- they've been in trouble with the Missouri  
20 Department of Natural Resources, either for, like,  
21 E. coli in the drinking water, you know, dumping  
22 untreated sewage into a creek, not disinfecting, stuff  
23 like that.

24                      Compliance schedules. So the Missouri  
25 Department of Natural Resources, when they do permitting

1 for dischargers or water systems, if they're currently  
2 out of compliance, they come up with a compliance  
3 schedule, and the compliance schedule is a plan that the  
4 company has agreed to bring their systems into  
5 compliance.

6 The estimated new capital required, those are  
7 the systems that we have knowledge of that we toured or  
8 we own or have some kind of basic understanding. So we  
9 estimated -- we gave a range of capital sometimes or  
10 maybe a more solid number of what we think it would cost  
11 to bring these systems into Missouri Department of  
12 Natural Resources regulatory compliance.

13 And the final column there is the company  
14 status. So what I try to demonstrate there is, is this  
15 a stand-alone company that's still operating? Is it  
16 under contract to be sold to another utility? And we  
17 think those systems are being sold because they don't  
18 have access to capital. That's our opinion. Or have  
19 they already sold previously, and then we talk about who  
20 they were sold to.

21 **Q. In terms of -- I think you maybe touched on**  
22 **this in your testimony.**

23 **But in terms of a couple of those lenders,**  
24 **there's a First State Community Bank listed and a**  
25 **Peoples Bank listed. Are those banks you have**

1 **approached for financing?**

2 A. Yes, we've approached both of those banks for  
3 financing. Particularly First State Community Bank was  
4 recommended to us by the Public Service Commission staff  
5 as a bank potentially that could loan us money.

6 **Q. Now, you talked about some of the utilities**  
7 **that are not in great shape, but there is a couple on**  
8 **there that are pretty solid or have maybe a little**  
9 **different profile.**

10 **For example, Raytown Water Company. Do you**  
11 **know what kind of water revenues they have on an annual**  
12 **basis?**

13 A. Yeah. I have their annual report statement  
14 here under annual revenues. So if you look at Raytown  
15 Water, Raytown Water's total annual revenue per their  
16 last annual report was \$4,023,423.

17 **Q. And then there is a reference on there to**  
18 **Lake Region which I believe has been sold now, but as of**  
19 **its last annual report what type of annual revenues did**  
20 **it have?**

21 A. The Lake Region, the water revenues were  
22 \$252,637 and the sewer revenues were \$683,026.

23 **Q. So about 930,000 altogether on an annual**  
24 **basis?**

25 A. I agree with that.

1           **Q.           And in the case of Indian Hills, what's the**  
2           **current annual revenues for Indian Hills?**

3           A.           I think it's around 91,000, 91 or \$92,000 a  
4           year, right in that range.

5                       MR. COOPER: Your Honor, I would offer  
6           Exhibit 15 at this time.

7                       JUDGE JORDAN: Objections to Indian Hills  
8           No. 15?

9                       MR. SMITH: Yes. We object on hearsay. I  
10          believe the witness stated that this was obtained by  
11          annual reports which -- but the witness also said that  
12          it was based on conversations.

13                      I cannot tell which columns are based on  
14          conversations versus which columns are based on annual  
15          reports. Perhaps additional foundation could extinguish  
16          that objection.

17                      JUDGE JORDAN: Any response to that  
18          objection?

19                      MR. COOPER: Well, I guess my first one is is  
20          that I believe it's essentially a compilation by an  
21          expert in small water/sewer matters in the state of  
22          Missouri. He's taken into account and described how  
23          he's come about the information he's compiled. I think  
24          it should be admissible.

25                      And to the extent there is hearsay involved,

1 it can be taken -- it can be considered in the weight of  
2 the evidence.

3 JUDGE JORDAN: Okay. I'm going to overrule  
4 the objection under Section 536, Subdivision 11 relating  
5 to results of statistical examinations or studies or of  
6 audits, compilations or figures or surveys, involving  
7 interviews with many persons or examination of many  
8 records. So that objection is overruled. Exhibit  
9 No. 15 of Indian Hills is admitted into the record.

10 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)

11 MR. COOPER: I don't know how to proceed  
12 here. Let me get myself in order.

13 BY MR. COOPER:

14 Q. Mr. Cox, earlier in your testimony I think  
15 that you described the members of First Round. Is it  
16 GWSD?

17 A. LLC, correct.

18 Q. And yourself?

19 A. That is correct.

20 Q. And then later I think in answer to a  
21 question you said that Mr. Glarner was a member. Is  
22 Mr. Glarner -- either of the Mr. Glarners a member of  
23 First Round?

24 A. No. Good clarification. Neither one are  
25 members. GWSD, LLC is the member.

1           **Q.**        You were asked about why there are separate  
2           **subsidiaries for each of the systems. I think the**  
3           **answer you gave at the time had to do with rate cases.**  
4           **Would you explain that a little bit?**

5           A.        Yes. It's my experience that every utility  
6           system or group utility systems inside a family company  
7           have to stand alone.

8                    JUDGE JORDAN: Slowly, please.

9                    MR. COOPER: Yes, slow down for all of us.

10           BY MR. COOPER:

11           **Q.**        But I think you talked about the fact that  
12           **you can bring them in after construction, right, when**  
13           **they're individual companies?**

14           A.        Individual? I'm sorry. I'm not  
15           understanding.

16           **Q.**        So, for example, Indian Hills, a separate  
17           **corporation. When you finished the construction with**  
18           **Indian Hills, you were able to come in for an Indian**  
19           **Hills rate case. Is that correct?**

20           A.        That's correct.

21           **Q.**        If you had one company, you would have to  
22           **also bring back Raccoon Creek, Hillcrest at the same**  
23           **time. Correct?**

24           A.        That is correct.

25           **Q.**        You also reference liability protection as a

1 **purpose of the construct of the organization.**

2 **In the absence of separate companies, would**  
3 **customers of Raccoon Creek be exposed to the risk of the**  
4 **Hillcrest assets?**

5 A. Yes, that's the way I view it. There would  
6 be cross-collateralization of risk if they weren't  
7 stand-alone companies for the customers.

8 **Q. So if some of these risks came to fruition,**  
9 **for example, in Indian Hills, in that scenario that**  
10 **would directly impact the customers of Raccoon Creek and**  
11 **Hillcrest?**

12 A. That is exactly correct. That's how I  
13 understand it.

14 **Q. You talked about your correspondence with**  
15 **Peoples Bank. Do you remember that?**

16 A. Yes, I do.

17 JUDGE JORDAN: Your Honor, I'm going to mark  
18 three exhibits.

19 Exhibit 16 will be a series of pages, but at  
20 the top it says Indian Hills Water Project and is dated  
21 July 21, 2015. Exhibit 17 will be a series of e-mails  
22 with the date August 10, 2015 at the top. And then  
23 Exhibit 18 will be an e-mail with the date August 11th  
24 at the top.

25 MR. THOMPSON: August 11, '15?

1 MR. COOPER: Yes. Sorry. August 11, 2015.

2 (EXHIBITS 16, 17 AND 18 WERE MARKED FOR

3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. COOPER:

5 Q. Mr. Cox, do you have in front of you what's  
6 been marked as Exhibits 16, 17 and 18 for  
7 identification?

8 A. I do.

9 Q. What are those?

10 A. They are e-mails to Peoples Bank where we  
11 originally tried to inquire about a loan for the Indian  
12 Hills project. It's correspondence where they directed  
13 us to the executive vice-president and then further  
14 correspondence about the potential loan at Indian Hills.

15 Q. So Exhibit 16 -- that one prints out in kind  
16 of a funny order, but are those just sort of the initial  
17 conversations back and forth?

18 A. That is correct. Those are the initial  
19 conversations.

20 Q. And Exhibit 17, what does that show?

21 A. Is that the final one, the third one?

22 Q. No. No. That's August 10, 2015.

23 A. Thank you.

24 So in this e-mail it shows where Peoples Bank  
25 was doing their due diligence on potentially loaning



1 money to Indian Hills for the water project. And the  
2 executive vice-president, Jim Barnett, he called Jim  
3 Busch -- or, you know -- yeah, he called Jim Busch with  
4 the Missouri Public Service Commission, and then he  
5 forwarded us an e-mail chain that he had back and forth  
6 with Mr. Busch about potentially what the regulatory  
7 market is in Missouri, those kind of things.

8 **Q. And then on the last page of that exhibit,**  
9 **would you turn to that?**

10 A. I have it.

11 **Q. And what is that document?**

12 A. This is where the bank tried to sum up for  
13 their own standpoint how they would look at potentially  
14 doing a loan for Indian Hills. So they did a breakdown  
15 of the different costs associated with it. They did a  
16 different breakdown, potential debt and equity ratios,  
17 all that kind of good stuff.

18 **Q. And there's a reference to the cash that**  
19 **would be needed. What is that about?**

20 A. That is the total amount of money that would  
21 be required to do this project.

22 **Q. Well, I think you mentioned earlier in**  
23 **response to questions that perhaps you had identified**  
24 **some dollars that at least the company would be willing**  
25 **to put forward. Is that correct?**

1 A. That is correct.

2 And you see that there's a total debt and  
3 total equity number down there, that the bank came up  
4 with that.

5 Q. **And that's something that would have been**  
6 **acceptable to the company?**

7 A. That is correct.

8 Q. **And then Exhibit 18, which is the e-mail**  
9 **dated August 11, 2015, what is that?**

10 A. That is a rejection e-mail, where the bank,  
11 even with -- they came up with their own kind of  
12 breakdown of what a loan might look like. They still  
13 could not get comfortable with making a loan in the  
14 regulated utility market.

15 MR. COOPER: Your Honor, I would offer  
16 Exhibits, 16, 17 and 18.

17 JUDGE JORDAN: Any objection to Indian Hills  
18 Exhibit Nos. 16, 17 and 18?

19 (No response.)

20 JUDGE JORDAN: Not hearing any, Indian Hills  
21 Exhibits No. 16, 17 and 18 will be entered into the  
22 record.

23 (EXHIBIT NOS. 16, 17 AND 18 WERE RECEIVED  
24 INTO EVIDENCE.)

25 BY MR. COOPER:

1 Q. You had a conversation with Mr. Smith about  
2 the terms of capitalization, and it kind of feeds upon  
3 the correspondence we just looked at from Peoples Bank.

4 Now, you had conversations as to what the  
5 company would be willing to do. Correct?

6 A. That's correct.

7 Q. And I think -- is your point that you've  
8 never gotten a bank to come back and say we would do it  
9 under X terms?

10 A. That's correct. We've never gotten a formal  
11 bank term sheet. They would give us the terms of what a  
12 bank loan would be.

13 Q. There was reference to an investigation of a  
14 loan that you had made, I guess it's Exhibit 238, and  
15 got a rejection -- from which bank was it, American,  
16 that Brian Glarner was associated with?

17 A. Enterprise Bank.

18 Q. Enterprise Bank.  
19 That concerned Brandco. Is that correct?

20 A. That's correct. Brandco, which was Hillcrest  
21 for us.

22 Q. Okay. At that point in time were the  
23 Glarners involved at all in your investment structure?

24 A. No, they were not. In fact, I had not met  
25 them at that point even.

1 Q. You talked about the modifications -- loan  
2 modifications that have been done along the way.

3 Would it be accurate to say that the  
4 expectation of the lender has always been that your  
5 payments would start after your rate case?

6 A. Yes, that has always been the expectation.

7 Q. Okay. And in circumstances then you've kind  
8 of cleaned that up or you've confirmed that through  
9 formal loan modifications?

10 A. That is correct.

11 Q. You talked about the interest that has  
12 accrued. Do you know -- there is nothing about accrued  
13 interest that is a part of the revenue requirement in  
14 this case, is there?

15 A. There is not.

16 Q. In reference to the loan origination fee, you  
17 kept referring to it being capitalized. You don't mean  
18 capitalized in that it's in the rate base?

19 A. No. I was not talking NARUC. I was talking  
20 GAAP. So it's not -- it's not capitalized as a part of  
21 our rate base that we have in the stipulation at all.

22 MR. COOPER: I think that's all of the  
23 questions I have, Your Honor.

24 JUDGE JORDAN: Then you may stand down.

25 I have one more witness on the topic of

1 capital on my list and that would be OPC's witness Greg  
2 Meyer.

3 We're also coming up to the lunch hour. Do  
4 the parties have a preference as to whether we break  
5 before or after?

6 MR. COOPER: I can move ahead.

7 JUDGE JORDAN: Let's move ahead. Let's do  
8 that then.

9 The next witness.

10 MR. SMITH: OPC calls Mr. Greg Meyer.

11 (Witness sworn.)

12 DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q. Good morning, Mr. Meyer.

15 A. Good morning.

16 Q. Would you please state your name and spell it  
17 for the court reporter?

18 A. Greg Meyer, M-e-y-e-r.

19 Q. And how are you employed, Mr. Meyer?

20 A. I'm a principal with Brubaker & Associates,  
21 Inc.

22 Q. And for how long have you been with  
23 Brubaker & Associates, Inc.?

24 A. June 1st, 2008.

25 Q. Have you filed testimony in this case,

1 **WR-2017-0259?**

2 A. I have.

3 MR. SMITH: All right. I have OPC premarked  
4 Exhibits 208, 209, 210 and 211, which will represent the  
5 direct testimony of Greg Meyer and his surrebuttal  
6 testimony in both confidential and public formats.

7 BY MR. SMITH:

8 **Q. Mr. Meyer, did you cause to be prepared the**  
9 **testimony in this case previously identified as OPC**  
10 **Exhibits 208, 209, 210 and 211, otherwise known as your**  
11 **direct and surrebuttal testimony?**

12 A. Yes.

13 **Q. Do you have any corrections to that**  
14 **testimony?**

15 A. I do. I have two small changes in my direct  
16 testimony.

17 Page 8, line 4. The word summaries should  
18 be summarizes. And then in my surrebuttal testimony,  
19 Schedule GRM-SUR-2 under Emerald Pointe, the  
20 5.35 percent should be 5.36 percent. And that's all of  
21 the changes I have.

22 **Q. Okay. Subject to those corrections, if I**  
23 **asked you the same questions that appear in your**  
24 **testimony again today under oath, would your answers be**  
25 **the same or substantially the same?**

1 A. Yes, they would.

2 MR. SMITH: Thank you.

3 At this time I move to offer OPC Exhibits  
4 208, 209, 210 and 211.

5 JUDGE JORDAN: Are there any objections to  
6 the Office of Public Counsel's Exhibits 208, 209 or 210  
7 or 211?

8 Hearing any objections, the Office of Public  
9 Counsel Exhibits 208, 209, 210 and 211 are entered into  
10 the record.

11 (OPC EXHIBIT NOS. 208 THROUGH 211 WERE  
12 RECEIVED INTO EVIDENCE.)

13 MR. SMITH: OPC tenders this witness for  
14 cross-examination.

15 JUDGE JORDAN: Cross-examination from Staff.

16 MR. THOMPSON: Thank you, Judge.

17 CROSS-EXAMINATION BY MR. THOMPSON:

18 **Q. How much are you being paid to be here to**  
19 **testify today, Mr. Meyer?**

20 A. My billing rate is \$180 an hour.

21 **Q. Do you know how much you've billed OPC so far**  
22 **in this case?**

23 A. I don't do the billing for my agency, so I  
24 don't know.

25 **Q. Do you know how many hours you've spent on**

1 **this case?**

2 A. I have not summarized those yet.

3 **Q. You don't like this financing, do you?**

4 A. I don't find the 14 percent interest rate and  
5 the prepayment penalty to be reasonable.

6 **Q. Can you state the name of any other financing  
7 source that you happen to know is ready and willing to  
8 provide financing to this company at a lower rate than  
9 14 percent?**

10 A. Public Counsel and myself arranged a meeting  
11 with First Community State Bank in Rolla and had a  
12 discussion with their senior loan -- their president of  
13 their loan division and a senior loan analyst, and the  
14 impression that I got after leaving that meeting after  
15 discussing the process, the regulatory process and the  
16 whole ordeal would -- I think that they would be someone  
17 that we would definitely suggest that there be a contact  
18 made because there was very favorable responses from  
19 that meeting.

20 **Q. If you know, was there any sort of written  
21 undertaking provided by First Community State Bank to  
22 provide financing to this company?**

23 A. Can you repeat that question?

24 **Q. Did they promise in writing to provide  
25 financing?**



1           A.       No, but they indicated that it was their  
2       opinion that more favorable terms than the ones that are  
3       presently in this rate case could be obtained.

4           MR. THOMPSON:   That's all of the questions I  
5       have.   Thank you, Judge.

6           JUDGE JORDAN:   Cross-examination from Indian  
7       Hills?

8           MR. COOPER:   No questions.

9           JUDGE JORDAN:   Questions from the bench for  
10      this witness?

11          COMMISSIONER KENNEY:   I have no questions.  
12      Thank you.

13          COMMISSIONER STOLL:   I just have one.

14      QUESTIONS BY COMMISSIONER STOLL:

15          **Q.       Mr. Meyer, will you talk to me a little bit**  
16      **about -- or talk to us a little about the prepayment**  
17      **penalty?  What is that?**

18          A.       Yes.

19                In the original loan document the interest  
20      rate was 14 percent, and then a clause in there said  
21      by -- and in addition to paying off the principal and  
22      interest for that there was a prepayment penalty for the  
23      entire time of the loan, 20 years.

24                So if that loan was refinanced at any time  
25      prior to the 20 years, the new loan -- or the person

1 that absorbed the new loan would have to pay not only  
2 the outstanding principal at that time but all of the  
3 accrued interest or the interest that would be payable  
4 for the entire 20-year period.

5 Under the new -- under the stipulation that  
6 the staff has entered into with the company, that  
7 prepayment penalty period has been reduced to ten years,  
8 but it still represents millions of dollars that the  
9 investors could take away from these investments if they  
10 are refinanced.

11 And I think you can see that on Mr. Cox's  
12 Schedule 5. I think it's -- I can't give you an exact  
13 number, but I think that in my memory it's around  
14 \$15 million of prepayments that are out there  
15 outstanding for the ten to twelve systems he has that he  
16 wants to obtain.

17 **Q. Is it unusual to have a prepayment penalty**  
18 **ten years in length or just -- maybe just even have one**  
19 **at all?**

20 A. Well, I can only -- I can go through -- or  
21 rely on our discussions that we had with the banking  
22 representatives in Rolla. And the senior loan person,  
23 Mr. Epperson, was very concerned -- I would use that  
24 word -- with the prepayment penalty for any length of  
25 time, especially when you looked at a 14 percent rate.

1 COMMISSIONER STOLL: Okay. I think that's  
2 all. Thank you.

3 COMMISSIONER KENNEY: I have a followup  
4 question on that.

5 QUESTIONS BY COMMISSIONER KENNEY:

6 **Q. What's the term of this loan?**

7 A. This loan is currently 20 years, 14 percent.

8 **Q. Okay. And at 14 percent.**

9 **And a prepayment penalty would be all of the**  
10 **interest accrued?**

11 A. The new -- the stipulation that is running is  
12 for ten years.

13 **Q. Ten years?**

14 A. Ten years, right. So all of the ten years,  
15 the interest that would be payable --

16 **Q. But I just want -- you said it would be in**  
17 **the millions. You mentioned the term 15 million.**

18 A. Well, that's --

19 **Q. Just a second.**

20 **So if the term is one point -- let's just for**  
21 **an estimate, one and a half million dollars -- I'm not**  
22 **using exact numbers -- at 14 percent. So on an**  
23 **annualized basis that's what, \$210,000?**

24 A. Well, and my testimony, just to maybe help  
25 you, at 1.7 million, with a prepayment penalty for the

1 full 20 years, it's 5.1 million principal and  
2 interest --

3 **Q. Okay.**

4 A. -- for a \$1.7 million loan.

5 **Q. Okay. I was wondering where the**  
6 **15 million --**

7 A. 15 million is attached to Mr. Cox's  
8 Schedule 5, which is a compilation of all of the  
9 prepayment penalties for the numerous systems that he's  
10 doing.

11 **Q. So you're bringing in the other systems, not**  
12 **just --**

13 A. I'm just -- that's what I'm --

14 **Q. Because I didn't see that, so --**

15 A. No. That's fine.

16 **Q. -- you've explained it.**

17 COMMISSIONER KENNEY: Thank you.

18 JUDGE JORDAN: Further questions from the  
19 bench?

20 I want to clarify some of your testimony, if  
21 I may, as to a potential lender that you discussed.

22 QUESTIONS BY JUDGE JORDAN:

23 **Q. Our prefiled testimony discusses certain**  
24 **phases of the lending process in terms of initial**  
25 **contacts and then further disclosures, and then if I**

1 remember correctly, the testimony is that sometimes the  
2 lender can tell that they're not interested and they  
3 will -- they will simply cut off the process because  
4 they don't want to waste any time.

5 With respect to that process, how far had the  
6 discussions gone with this potential lender that you  
7 were discussing?

8 A. Well, our potential lender is -- the  
9 meeting -- as a result of the meeting we had with First  
10 State Community Bank in Rolla.

11 Q. Uh-huh.

12 A. That's as far -- we never -- we never sat  
13 down with them and said what do you need for, you know,  
14 equity infusions or anything like that? We just talked  
15 about -- and the willingness of the owner to make equity  
16 infusions into the -- or to back it with equity. We  
17 never got into specifics. We just talked to them about  
18 the general conditions of the loans that was  
19 outstanding.

20 JUDGE JORDAN: Okay. That's all I have.

21 Did that raise any questions from the bench  
22 before I go on?

23 COMMISSIONER KENNEY: No, I don't think so.

24 Thank you.

25 JUDGE JORDAN: Then let's have recess from

1 staff.

2 RE-CROSS-EXAMINATION BY MR. THOMPSON:

3 Q. So your conversations with Community State  
4 Bank in Rolla, that was a maybe?

5 A. There was no guarantee. It's just that --

6 Q. It was a maybe, because you were in no  
7 position to execute any kind of obligation for the  
8 company?

9 A. No, and I --

10 Q. You were just inquiring?

11 A. Excuse me. I didn't say that it was. I said  
12 we went down there to figure out if there -- if these  
13 were reasonable terms for a loan.

14 Q. Okay.

15 A. And we were told no.

16 Q. And you were told no. Okay.

17 Did you ask them if these were reasonable  
18 terms in the event it was the only financing available?

19 A. No.

20 MR. THOMPSON: Thank you. No further  
21 questions.

22 JUDGE JORDAN: Recross from Indian Hills?

23 MR. COOPER: No questions.

24 JUDGE JORDAN: Redirect from the Office of  
25 Public Counsel?

1 MR. SMITH: No questions.

2 JUDGE JORDAN: Then you may stand down, sir.

3 Let's take a break for an hour for lunch, and  
4 the clock on the wall says noon straight up, so plan on  
5 reconvening at one o'clock straight up.

6 (A BREAK WAS TAKEN.)

7 JUDGE JORDAN: We're back on the record.

8 The Commission has concluded taking evidence  
9 on the cost of capital and our next topic is rate  
10 design. The first witness belongs to Indian Hills.

11 MR. COOPER: We will re-call Mr. Cox to  
12 testify in regard to rate design.

13 JUDGE JORDAN: This witness is still under  
14 oath, so we'll go straight to direct.

15 MR. COOPER: And we will tender Mr. Cox for  
16 cross-examination.

17 JUDGE JORDAN: Cross-examination from Staff.

18 MS. MERS: No questions.

19 JUDGE JORDAN: Cross-examination from the  
20 Office of Public Counsel.

21 MR. SMITH: Yes, just a few items.

22 CROSS-EXAMINATION BY MR. SMITH:

23 Q. Mr. Cox, earlier in this hearing I understand  
24 a Company Exhibit 17 was entered into evidence. Is that  
25 correct?

1 A. I don't know which one it is but I --

2 Q. **May I approach?**

3 JUDGE JORDAN: Yes.

4 THE WITNESS: Yes.

5 BY MR. SMITH:

6 Q. **And also this attachment?**

7 A. (Nods head.)

8 Q. **Also previously entered into evidence was OPC**  
9 **Data Requests 1 through 29. Do you recall that?**

10 A. I do.

11 Q. **And do you have that in front of you?**

12 A. I pulled it up.

13 Q. **Okay. You have pulled it up?**

14 A. I do.

15 Q. **Okay.**

16 MR. COOPER: I'm going to object. I guess  
17 Mr. Smith will have something to do here, but this  
18 doesn't sound like we're headed down the path to rate  
19 design, and so I'm going to object on that basis.

20 JUDGE JORDAN: Well, if you can tell us where  
21 we're headed, Mr. Smith.

22 MR. SMITH: Well, he is right. I wanted to  
23 put into the record, OPC had asked a data request and it  
24 came to my attention that Document 17 -- or Company  
25 Exhibit 17 had an attachment to it which OPC did not



1 receive as a part of its -- the Company's answer. So I  
2 wanted to establish that on the record.

3 JUDGE JORDAN: Okay. That sounds like a  
4 discovery dispute.

5 MR. SMITH: I guess I would agree.

6 I was unaware at the time that it was being  
7 offered that this was -- I guess it only had occurred to  
8 me at the lunch hour that what was being offered wasn't  
9 actually what OPC had received in discovery. So I guess  
10 I just wanted to make a record of that.

11 JUDGE JORDAN: Okay. So you're suggesting  
12 that one of the exhibits that's been entered is  
13 incomplete? Is that what you're saying?

14 MR. SMITH: It's actually more complete than  
15 the incomplete data request response. So in response to  
16 a data request we -- based on this exhibit I understand  
17 we had an incomplete response. It was missing an  
18 attachment.

19 Up until the hearing I had assumed that that  
20 was responsive because that's what the discovery rules  
21 require. And so it's come to my attention that there is  
22 an attachment in another document that was not  
23 disclosed, and so I'm just trying to make a record of  
24 that.

25 JUDGE JORDAN: Okay. So you're saying that a

1 response to discovery was incomplete and you just found  
2 that out based on one of the Company's exhibits. Is  
3 that correct?

4 MR. SMITH: That's exactly right.

5 JUDGE JORDAN: Okay. I have to say that  
6 sounds like Mr. Cooper is right. This doesn't seem to  
7 relate to rate design.

8 Do you think the parties could work that out  
9 later if we were off the record for a while?

10 MR. SMITH: Well, it just prejudiced OPC in  
11 terms of its preparation for this case. That's all. I  
12 just wanted to make a record of that.

13 JUDGE JORDAN: Okay. Why don't you do  
14 that -- why don't we just go ahead and do that really  
15 quick and then we'll get on with the cross-examination  
16 of this witness on rate design.

17 MR. SMITH: Okay. All right.

18 MR. COOPER: I guess, Your Honor -- and  
19 that's okay obviously, but I guess we're not going to be  
20 able to -- I don't think we're going to be able to  
21 respond on the spot to this but --

22 JUDGE JORDAN: Let's just take this out of  
23 order.

24 Tell me what is omitted from the discovery  
25 response.

1 MR. SMITH: So on Company Exhibit 17 there's  
2 the last page, which is I think the fourth page, that  
3 item was not disclosed.

4 JUDGE JORDAN: And what is that item?

5 MR. SMITH: That item is a -- I guess kind of  
6 a spreadsheet of different costs, including comments  
7 that I understand would have been exchanged as between  
8 Peoples Bank and Mr. Cox.

9 JUDGE JORDAN: And how does that prejudice  
10 the Office of Public Counsel?

11 MR. SMITH: Well, because it was part of what  
12 was discussed in the loan application and we didn't have  
13 access to this document and it discussed things that we  
14 were unaware of.

15 JUDGE JORDAN: And would that document have  
16 helped you make your case better?

17 MR. SMITH: It may have changed the way in  
18 which we presented our questions, and it may have  
19 changed our trial strategy just a little bit. I'm not  
20 sure a lot. But I think I did want to get it on the  
21 record that this was new to us.

22 JUDGE JORDAN: Would that have changed the  
23 relief that the Office of the Public Counsel wants from  
24 the Commission?

25 MR. SMITH: I don't think it would, no.

1 JUDGE JORDAN: Okay. Why don't we do this.  
2 Instead of a lengthy interrogation of this witness,  
3 maybe you and counsel can get together and describe what  
4 this was and maybe we can just go ahead and get that  
5 much agreed on the record. Okay?

6 MR. SMITH: Okay.

7 JUDGE JORDAN: Let's go off the record for  
8 about five minutes.

9 MR. SMITH: Okay. Thank you.

10 (A BREAK WAS TAKEN.)

11 JUDGE JORDAN: And we are back on the record.

12 Do the parties have a resolution for this  
13 issue, at least a temporary one?

14 MR. SMITH: Yes.

15 JUDGE JORDAN: Let's hear it.

16 MR. SMITH: Mr. Cooper, do you want to  
17 present or --

18 MR. COOPER: Would you like me to?

19 MR. SMITH: Yeah, sure.

20 MR. COOPER: So as I understand it, it's the  
21 final page of Exhibit 17 that Mr. Smith is concerned  
22 about. We're going to take a look at our records as  
23 well and then essentially report back and try to move  
24 forward with this on Thursday when we take things up on  
25 Thursday.

1 JUDGE JORDAN: Okay. Then we'll defer  
2 further discussion of that matter until Thursday.

3 So we will resume with cross-examination of  
4 Josiah Cox by the Office of Public Counsel.

5 MR. SMITH: No questions.

6 JUDGE JORDAN: Any questions from the bench  
7 for this witness?

8 COMMISSIONER STOLL: No questions.

9 COMMISSIONER KENNEY: No questions.

10 JUDGE JORDAN: I have no questions for you,  
11 so we have no recross.

12 Any redirect?

13 MR. COOPER: No.

14 JUDGE JORDAN: Then you may step down.  
15 The next witness.

16 MS. MERS: Staff calls Curt Gateley to the  
17 stand.

18 JUDGE JORDAN: Please raise your right hand.  
19 (Witness sworn.)

20 JUDGE JORDAN: Thank you.

21 CURT GATELEY having testified as follows:

22 DIRECT EXAMINATION BY MS. MERS:

23 Q. Can you please state and spell your name for  
24 the record?

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

1           **Q.           And who are you employed by and in what**  
2           **capacity?**

3           A.           Public Commission staff as a Utility Policy  
4           Analyst II.

5           **Q.           And did you cause to be prepared direct**  
6           **testimony and rebuttal testimony that's been marked as**  
7           **Exhibit 101 and Exhibit 107 in this case?**

8           A.           Yes.

9           **Q.           Is it your understanding that the**  
10          **nonunanimous stipulation and agreement has modified your**  
11          **testimony?**

12          A.           Yes.

13          **Q.           With that in mind, at the time that you wrote**  
14          **your testimony were those answers true and accurate to**  
15          **the best of your knowledge and belief?**

16          A.           Yes, although I do have two corrections.

17          **Q.           Oh, sure. What would those corrections be?**

18          A.           In my direct testimony on page 3, lines 15  
19          and 16 should read as a general practice a simple rate  
20          design is preferred by customers and utilities rather  
21          than utility customers.

22                    And on page 3 of my rebuttal, line 6, near  
23          the end of the line, new sentence, the extremely high  
24          customer charge be changed to commodity charge.

25          **Q.           And with those corrections in mind and with**

1 the caveat that at the time you wrote your testimony  
2 it's been supplemented by the nonunanimous stipulation  
3 and agreement, are those questions true and -- or are  
4 those answers true and accurate to the best of your  
5 knowledge and belief?

6 A. Yes.

7 MS. MERS: At this time I'd like to move to  
8 enter Staff Exhibits 101 and 107.

9 JUDGE JORDAN: Exhibits 101 and 107 of Staff  
10 have been offered into evidence. Are there any  
11 objections to those exhibits?

12 MR. SMITH: No objection.

13 MR. COOPER: No objection.

14 JUDGE JORDAN: Staff Exhibits 101 and 107 are  
15 entered into the record.

16 (EXHIBIT 101 AND 107 WERE RECEIVED INTO  
17 EVIDENCE.)

18 MS. MERS: I tender the witness for cross.

19 JUDGE JORDAN: Cross-examination from Indian  
20 Hills?

21 MR. COOPER: No questions.

22 JUDGE JORDAN: Cross-examination from the  
23 Office of Public Counsel?

24 MR. SMITH: Yes. Thank you.

25 CROSS-EXAMINATION BY MR. SMITH:

1           **Q.       Mr. Gateway, did you perform a cost-of-**  
2           **service study in this case?**

3           A.       No.

4           **Q.       Did you perform some sort of analysis to**  
5           **arrive at the customer charge recommended in your direct**  
6           **testimony?**

7           A.       Yes.

8           **Q.       And what was that analysis?**

9           A.       I do not personally characterize it as a  
10          cost-of-service study, but it's an effort to  
11          characterize some of the costs that are provided through  
12          the audit that are clearly associated with fixed costs  
13          versus some variable costs, and because this is a  
14          relatively simple rate design, then the allocation of  
15          those costs amongst customer charge and commodity  
16          charge.

17          **Q.       What was the customer charge number that you**  
18          **developed as a part of your testimony?**

19          A.       And you're referring to my direct testimony?

20          **Q.       Yes.**

21          A.       52.04.

22          **Q.       What was the commodity charge?**

23          A.       \$7.87.

24          **Q.       Would you say that fixed or service charge --**  
25          **is that what you'd call it? The fixed customer charge,**



1 would you say that number is unusual?

2 A. I would describe it as uncommon.

3 Q. All other things being equal, would a high  
4 fixed charge or a high customer charge provide more  
5 certainty to the company with respect to collecting its  
6 approved requirement, revenue requirement?

7 A. In a simple mathematical sense, yes, I would  
8 agree with that.

9 Q. Are you concerned with any adverse  
10 implications of having a high fixed charge?

11 A. Not specifically, no.

12 Q. What sort of information would have helped in  
13 forming your rate design that was not present in this  
14 case?

15 A. Like I've mentioned in testimony, that we  
16 don't have actual water sales data available. We also  
17 do not have -- because of the nature of the customers,  
18 some being reportedly full time and some self-professed  
19 part time, we have to rely on those customers'  
20 statements regarding their presence and use of the  
21 system, that the data of their actual use of the system  
22 is not available. Those are two items I identified in  
23 testimony. I can't think of others off the top of my  
24 head right now.

25 Q. Do you have any concerns with customer

1 **shut-offs or reconnects?**

2 A. Some.

3 **Q. What sort of concerns do you have?**

4 A. It's possible that some customers could, if  
5 they were some of the customers who described their  
6 usage as only some weekends during the summer, they  
7 could in theory shut off service while they weren't  
8 there. Such language is mitigated by tariff language  
9 with some other companies I believe, where if the same  
10 customer disconnects and reconnects within a certain  
11 period of time, it makes clear that they would be  
12 subject to the customer charges in the meantime if they  
13 were simply trying to avoid that.

14 Another approach would be to potentially try  
15 to recover some of those lost costs in the disconnect/  
16 reconnect charge, but neither of those solutions are  
17 perfect.

18 **Q. Are either of those solutions contained in**  
19 **the stipulation?**

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

21 MR. SMITH: Okay. No further questions.

22 JUDGE JORDAN: Questions from the bench?

23 COMMISSIONER STOLL: I do have a question.

24 QUESTIONS BY COMMISSIONER STOLL:

25 **Q. Good afternoon, Mr. Gateley.**

1 A. Good afternoon.

2 Q. On the fixed charge or the commodity charge,  
3 is Staff's position still that the monthly minimum would  
4 be 52.04 or did that change in the stipulation?

5 A. That changed.

6 Q. To what? Could you tell me?

7 A. I try not to memorize numbers, so I don't  
8 mess up.

9 Q. I certainly understand.

10 A. Reading from the stipulation the customer  
11 charge would change to 59.02.

12 Q. And then the usage charge -- actually that's  
13 the commodity charge, isn't it? That stays at 7.87 or  
14 what does that change to?

15 A. That would change to a seasonal difference, a  
16 summer commodity charge of 9.37 and a winter commodity  
17 charge of 7.67. The purpose was to shift cost recovery  
18 toward the summer months when reportedly more customers  
19 were present and using the system, because customers  
20 stated to us that they were less likely to be there  
21 during the winter. In theory they would be providing  
22 less of the cost recovery by their lack of presence.

23 This represents a 5 percent shift. Because  
24 of the lack of data Staff was very uncomfortable with  
25 the concept of shifting a lot of cost recovery on a

1 theoretical concept, but it was part of where we ended  
2 up in settlement.

3 Q. So do you agree that I guess in the next rate  
4 case or within a year or so that the parties should come  
5 back with some data as to how much of the commodity they  
6 have been selling?

7 A. Absolutely.

8 Q. Okay. So I think I just want to ask you one  
9 other thing.

10 So if that actually went up from 52.04 to  
11 59.02 on the fixed charge, do you have an issue with the  
12 43.03 that was suggested by the Office of Public Counsel  
13 as the fixed charge? What effect would that have?

14 A. With rate design -- and you work through  
15 iterations of rate design when you're doing this work.

16 I can tell you that shifting those extra --  
17 that cost recovery into the commodity charge would raise  
18 it. At some point there's a threshold where a commodity  
19 charge can be raised so high that people would modify  
20 their behaviors to an extreme degree to try to avoid  
21 using water. That's academic.

22 It's not something that I can point to a  
23 specific study where this type of person in the Midwest  
24 does this at this number, but I believe Public Counsel  
25 had proposed a commodity charge of \$16 per thousand

1 gallons. That number to Staff was -- was extreme enough  
2 to be concerning.

3 What would result then would be a company not  
4 recovering all their costs and then having to come back  
5 in for a rate case and then what's the solution? Do you  
6 continue shifting?

7 I don't have a particular problem with \$43.  
8 It was where do you recover that money and trying to  
9 avoid social engineering by having that cost you can  
10 control be so extreme.

11 COMMISSIONER STOLL: Yeah. As someone who --  
12 I checked our water bill the other day and I think we  
13 pay 11.81 or something like that per thousand gallons,  
14 and that definitely affects our usage behavior, except  
15 when I need to water my plants, but that's the seasonal  
16 piece I guess there too.

17 I just wanted to ask you those questions to  
18 kind of better understand why you chose this rate  
19 design. Thank you.

20 COMMISSIONER KENNEY: Hello. I just have a  
21 few questions.

22 QUESTIONS BY COMMISSIONER KENNEY:

23 **Q. You made the comment in your direct that**  
24 **currently there are no Missouri regulated water**  
25 **utilities that have seasonal rates. Is that true? No**

1 **seasonal rates with any water companies --**

2 A. To the best of my knowledge.

3 **Q. -- regulated by the State of Missouri, or**  
4 **PSC?**

5 A. To the best of my knowledge, yes.

6 **Q. Would it be helpful to put language in the**  
7 **tariffs that have shut-off provisions for seasonal**  
8 **homeowners?**

9 A. To?

10 **Q. Well, to protect the revenue stream for the**  
11 **companies so they can meet their obligations.**

12 A. I think it would be helpful, and I believe  
13 that occurs in other existing tariffs, that shut-off  
14 provision, but I don't know for certain. I believe I  
15 read language similar to that and discussed it with  
16 staff with other cases that I wasn't working on.

17 **Q. But you don't have any knowledge of any**  
18 **particular company?**

19 A. No, not off the top of my head, no, but I  
20 believe that such language exists in another tariff  
21 about the shut-off provision.

22 COMMISSIONER KENNEY: Thank you.

23 JUDGE JORDAN: I just want to follow up on  
24 that for the record and to make it plain to people like  
25 myself.

1 QUESTIONS BY JUDGE JORDAN:

2 Q. Can you tell us what is meant in that  
3 discussion by a shut-off provision?

4 A. The concept of a customer during some portion  
5 of time discontinuing service themselves, shutting off  
6 the water service to avoid having to pay the monthly  
7 service charge and then reconnecting when they decide  
8 they're ready to use the service again.

9 The costs associated with a customer charge  
10 are typically those that are for fixed costs that need  
11 to be recovered because a service is being provided to  
12 that residence. So those costs don't go away when that  
13 customer doesn't happen to be there, so you hurt the  
14 cost recovery for the company.

15 JUDGE COOPER: All right. Thank you for that  
16 clarification.

17 Any recross from Indian Hills?

18 MR. COOPER: Very briefly.

19 RECROSS-EXAMINATION BY MR. COOPER:

20 Q. You spoke about a lack of data. I think we  
21 talked about this earlier in the case, but when you talk  
22 about a lack of data, are you referring to the fact that  
23 before Indian Hills installed meters there were not  
24 good, working, dependable meters in this system?

25 A. That's my understanding, yes.

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

3 JUDGE JORDAN: Any recross from the Office of  
4 the Public Counsel?

5 MR. SMITH: Yes, very briefly.

6 RECROSS-EXAMINATION BY MR. SMITH:

7 Q. I think you made a comment in answering -- I  
8 think it was maybe Commissioner Stoll's question about a  
9 concern about OPC's rate design is that it might not  
10 allow the company to recover their cost under OPC's  
11 proposal. Do you remember that?

12 A. Yes.

13 Q. And so essentially there's a shifting of risk  
14 that would create more risk for the company in that  
15 situation. Right?

16 A. From my perspective it creates risk for the  
17 customers and the company because the solution to not  
18 recovering enough of the cost is another rate case and  
19 the costs associated therein.

20 It is not -- it is not a situation where a  
21 company might not earn the profit that they're entitled  
22 of a chance to earn but it's a situation potentially of  
23 a catastrophically short amount of revenue coming in,  
24 such that they would be compelled to come back in to  
25 repair the rate design.



1           **Q.        Would you agree that a lower customer charge**  
2           **and a higher commodity charge would give customers more**  
3           **control over their bill generally speaking?**

4           A.        Yes.

5           **Q.        Also, as a part of the stipulation, are there**  
6           **notice provisions to the customers when there's a rate**  
7           **change?**

8           A.        There are notice provisions in the State  
9           regulations regarding a rate change.

10          **Q.        So you would support notice to customers when**  
11          **seasonal rates would go into effect. Correct?**

12          A.        I have -- I have no concerns with that --  
13          with that idea. Just off the top of my head thinking  
14          about it, a mention on the bill of next month rates  
15          change, remember, I think that would be something Staff  
16          would support.

17                   MR. SMITH: Okay. Thank you.

18                   JUDGE JORDAN: Any redirect?

19                   MS. MERS: Briefly.

20          REDIRECT EXAMINATION BY MS. MERS:

21          **Q.        You were asked about the commodity -- or the**  
22          **customer charge would be unusual. Would you find a \$16**  
23          **commodity charge to be unusual?**

24          A.        Yes.

25          **Q.        Do you understand -- or is it your**

1 understanding that there's been usage data agreed to as  
2 part of the nonunanimous stipulation and agreement?

3 A. I'm sorry. Could you repeat?

4 Q. Yeah, I didn't word that great.

5 Has the company to your knowledge agreed to  
6 submit the monthly usage data to the Staff -- both Staff  
7 and OPC as part of this nonunanimous stipulation and  
8 agreement?

9 A. Yes.

10 Q. And what would that data be used for going  
11 forward?

12 A. In theory that data would be used to examine  
13 a more seasonal usage characteristic and revenue stream  
14 for the company because it would be looking at  
15 nonseasonal rates. Instead of the typical annual report  
16 it would specifically be a summary associated with the  
17 usage and revenue stream for the company to try to fill  
18 in the existing data gap.

19 Q. Okay. So tighten and refine this rate design  
20 going forward in the next rate case?

21 A. Yes.

22 Q. You were talking with Mr. Smith, counsel for  
23 OPC, about the possibility of catastrophic shortfalls in  
24 revenue.

25 In a situation like that -- in a system like

1 **Indian Hills, which was not in great shape to begin**  
2 **with, do you believe that that could pose a threat to**  
3 **safe and adequate service being provided?**

4 A. Certainly.

5 MS. MERS: I have nothing further. Thank  
6 you.

7 JUDGE JORDAN: You may step down.

8 We'll take a break for ten minutes and then  
9 we'll come back on the record.

10 (A BREAK WAS TAKEN.)

11 JUDGE JORDAN: We are back on the record.

12 Next witness.

13 MR. SMITH: Office of the Public Counsel  
14 calls Dr. Geoff Marke.

15 JUDGE JORDAN: Please raise your right hand.

16 (Witness sworn.)

17 DIRECT EXAMINATION BY MR. SMITH:

18 **Q. Dr. Marke, would you please state and spell**  
19 **your name for the court reporter?**

20 A. It's Geoff, G-e-o-f-f, Marke, M-a-r-k-e.

21 **Q. What is your job title?**

22 A. The Chief Economist for the Missouri Office  
23 of Public Counsel.

24 **Q. And how long have you been with the Office of**  
25 **the Public Counsel?**

1 A. Since 2014.

2 Q. Have you filed testimony in this case,  
3 WR-2017-0259?

4 A. Yes.

5 Q. Office of the Public Counsel has an  
6 Exhibit 213 -- or sorry -- 212 -- excuse me -- that I'll  
7 hand to the court reporter.

8 Q. Did you prepare or cause to be prepared the  
9 testimony marked as Exhibit 212?

10 A. Yes, I did.

11 Q. Do you have any corrections to be made to  
12 that testimony?

13 A. No, I do not.

14 Q. If I were to ask you the same questions that  
15 appear in your testimony, would your answers be the same  
16 or substantially the same?

17 A. Yes.

18 MR. SMITH: Thank you.

19 At this time I'd offer OPC Exhibit 212.

20 JUDGE JORDAN: The Office of Public Counsel's  
21 Exhibit 212 has been offered. Are there any objections?

22 MR. COOPER: No objection.

23 MS. MERS: No objection.

24 JUDGE JORDAN: Hearing no objections  
25 Exhibit No. 212 is entered into the record.

1 (EXHIBIT 212 IS RECEIVED INTO EVIDENCE.)

2 MR. SMITH: OPC will tender Dr. Marke for  
3 cross-examination.

4 JUDGE JORDAN: Cross-examination from Staff.

5 MS. MERS: No questions.

6 JUDGE JORDAN: Cross-examination from  
7 Indian Hills?

8 MR. COOPER: No questions.

9 JUDGE JORDAN: Any questions from the bench?

10 COMMISSIONER STOLL: I have a question.

11 QUESTIONS BY COMMISSIONER STOLL:

12 Q. Good afternoon, Dr. Marke.

13 A. Commissioner Stoll.

14 Q. I have a question. I don't know if you or  
15 who attended the local public hearing on this case, but  
16 there was an optional rate structure proposal put into  
17 the record by Russell Hunt, an Indian Hills property  
18 owner. Do you recall that?

19 A. I do recall it. I don't -- unfortunately  
20 don't have a copy in front of me.

21 Q. Yeah. You could take a look at my copy. I  
22 was just -- I guess what I was wondering is what you  
23 thought of a proposal like that. Obviously the -- I  
24 mean, he's making a point that you pay the same amount  
25 using up to, what, 4,000, 6,000 gallons or something?

1 A. Right.

2 Q. But in his proposal I guess what he's saying  
3 is that it gives the water user no incentive to conserve  
4 water. But anyway, if you could look at that. What is  
5 your take on that?

6 A. Well, I appreciate Mr. Hunt's work on this.  
7 You know, I think there is some merit to it. You know,  
8 there's a lot of ways you can design rates.

9 Q. Yeah.

10 A. And, you know, it's -- the reality of this is  
11 it's an accelerated schedule. Things moved across  
12 fairly quickly. I think all parties attempted to do  
13 their best effort.

14 OPC's perspective -- and to a certain extent  
15 we tried to address some of Mr. Hunt's concerns here.  
16 We looked at our rate design as sort of a hybrid between  
17 what Staff had offered up and a recognition that  
18 ratepayers -- captive ratepayers, mind you, who are  
19 going to experience this rate shock -- I mean,  
20 regardless of whatever the revenue requirement is, it's  
21 going to be a lot of money.

22 And, you know, to the extent that there is  
23 consideration for both the company and for ratepayers in  
24 absorbing this, that's what our rate design tries to do.

25 Our summer seasonal has a high customer

1 charge. Our winter seasonal has a high commodity  
2 charge. At the end of the day we felt -- and we got an  
3 overwhelming sense from feedback both at the public  
4 hearing, and I spoke with Ms. Mary Beth Hoffman, who was  
5 the Indian Lake Property Owner Association President,  
6 that at the end of the day there is a recognition that  
7 things are bad and that this asks from the company,  
8 although it's a lot, you know, they understand that  
9 something needs to be done.

10 With that in mind, though, we wanted to give  
11 customers the option to control their bills, and  
12 Mr. Hunt here and also OPC's design is attempting to do  
13 that to a larger extent.

14 You know, I heard my counsel Mr. Smith say in  
15 his opening comments, he had referenced one of the  
16 public comments that said I'm just going to shut off my  
17 water. I just won't turn it on. Right?

18 I mean, the reality of it is is let's say  
19 that customer does that. He's still going to get billed  
20 \$59.06 if we went with the nonunanimous stipulation  
21 design.

22 I think intuitively most people don't look at  
23 their bills and their rate structure with a finetooth  
24 comb. I think they get a sense if I use less, I should  
25 be charged less. And we know based off of the public

1 comments and just the cursory understanding that we've  
2 attempted to do, there's a lot of seniors here, and  
3 there's a lot of seniors that need to make hard choices  
4 between heating, eating, medicine and now water. Right?  
5 And to the extent that, you know, in the winter season  
6 they have got more control over their bill, our rate  
7 design enables that power.

8 **Q. And you believe it would still allow the**  
9 **company to capture the revenue they would need to?**

10 A. Both rate designs are designed to go ahead  
11 and meet the revenue requirement. I mean, there is no  
12 difference between the two.

13 What we did -- honestly, we don't want the  
14 company to be deficient. I mean, it's important that we  
15 have a healthy water company. I think it's also  
16 important that we keep in mind that those that are in  
17 most need of regulation are those captive ratepayers.

18 So to the extent possible our rate design  
19 tried to marry both of those concepts, make the company  
20 whole but also give the customers an opportunity to at  
21 least have some control over their bills.

22 **Q. Yeah. Be able to control the amount of water**  
23 **they use during the, what, October through May --**

24 A. Right.

25 **Q. -- when the commodity charge is high and the**



1 **customer charge is low during that time?**

2 A. You know, in an ideal situation we're going  
3 to get more data. Cautiously optimistic we'll be able  
4 to understand it and, you know, within a year or two  
5 years and we'll be able to see some patterns.

6 I mean, it's such a small number of customers  
7 that just, you know, any -- there's a lot of variables  
8 that, you know, just a handful of customers that decide,  
9 you know what, I don't need a second home, can really  
10 offset the numbers that you've got. Right? But it's  
11 going to give us a better idea and we're moving towards  
12 that.

13 **Q. In some of yesterday's testimony -- and I**  
14 **don't remember who it was -- but someone said that there**  
15 **are folks drilling wells. What do you know about that?**

16 A. And anecdotally that is what I've heard,  
17 that -- I mean, full disclosure, I'm not sure how much  
18 stock to put in that one way or the other, you know.

19 **Q. Yeah.**

20 A. Yeah.

21 COMMISSIONER STOLL: Okay. Thank you.

22 JUDGE JORDAN: Any other questions from the  
23 bench?

24 COMMISSIONER KENNEY: I have one.

25 QUESTIONS BY COMMISSIONER KENNEY:

1           Q.       I just had a quick question. I'm curious  
2 because under seasonal proposal under Table 3, with the  
3 usage rate for four months, June through September, and  
4 you have a usage rate of 6.06 and the customer charge of  
5 43.03. I know that's a higher charge for seasonal, but  
6 it strikes me as a little odd that you have such a low  
7 usage commodity charge compared to the nonseasonal and  
8 we're dealing with those 300 plus individuals who  
9 obviously are much wealthier. That's why they have a  
10 second home.

11           A.       Right.

12           Q.       I'm just curious -- I know that overall  
13 increase is maxed out, but I'm surprised why you didn't  
14 have more, like, a balanced usage charge there where you  
15 could then tail down the other usage charge for those  
16 individuals who as you said that are, you know, a median  
17 household income of 36,700?

18           A.       So, you know, there were some assumptions  
19 that were made in that design. We went with the  
20 assumption that customers are going to use less water in  
21 the wintertime. That's just -- we also went with the  
22 assumption based off of the information that we got that  
23 we might not have -- the seasonal customers aren't  
24 necessarily low-use customers.

25                    So an anecdotal example I would give you is

1 just a sprinkler system. You have a sprinkler system on  
2 for a couple of hours. You can easily use as much water  
3 or more water than the average home. Right?

4 **Q. Believe me, I understand.**

5 A. Right. We also had concerns that you might  
6 just have customers -- and to the extent that, you know,  
7 Mr. Smith already kind of echoed this, that we just shut  
8 off, and, you know, that might be a way of mitigating  
9 it.

10 **Q. We're not going to shut off during the**  
11 **summer.**

12 A. No.

13 **Q. That's when they use their homes.**

14 **They might shut off in the wintertime, which**  
15 **is what we're concerned about, and you take care of that**  
16 **I think by having a usage charge much higher --**

17 A. Right.

18 **Q. -- and monthly rates so much lower, so why**  
19 **would they shut off?**

20 A. Right. And that's to the point, is that we  
21 wanted to try to prevent that as much as possible. I  
22 mean, at the end of the day we felt that the higher  
23 commodity charge in the off season would allow customers  
24 to be able to control their bills.

25 **Q. And you think that -- and that -- under your**

1 **calculations that will meet the revenue requirements for**  
2 **Indian Hills Operating Company?**

3 A. I think -- I think there's a give and take  
4 here, and we're all operating within perfect knowledge.  
5 We have piecemeal data here that we're making a lot of  
6 assumptions that, you know, if I had the time, I would  
7 have gone out of Cuba, Missouri, 715 customers.  
8 Probably in a week I probably could have gotten a pretty  
9 good idea of every one of those customers and, you know,  
10 what their makeup is.

11 Based off of that, based off of that lack of  
12 knowledge, we felt like this was the best of a nonideal  
13 situation.

14 And what I would -- what I would say is the  
15 give and take here is that there's a risk and reward.  
16 So if we're guaranteeing -- if we're going to drop \$60,  
17 so it's a flat fee \$60 every month, the company is not  
18 just going to meet their revenue requirement. Like  
19 they're going to make a healthy profit. They're going  
20 to be fine.

21 **Q. Let me ask you one other question and then I**  
22 **can review it myself.**

23 **On GM-2 in your direct testimony, are those**  
24 **all your calculations?**

25 A. Yes.

1 COMMISSIONER KENNEY: Okay. Thank you.

2 THE WITNESS: And I would just add one more  
3 thing too. With our revenue requirement.

4 COMMISSIONER KENNEY: I understand. Thank  
5 you.

6 JUDGE JORDAN: Recross from staff?

7 RECROSS-EXAMINATION BY MS. MERS:

8 **Q. In discussions with Commissioner Stoll you**  
9 **mentioned the term rate shock. Would you agree that**  
10 **interim rates would prevent rate shock?**

11 A. Would I -- I'm sorry. Please restate that.

12 **Q. Sure.**

13 **Would interim rates, would they prevent rate**  
14 **shock?**

15 A. It would depend on the overall number.

16 **Q. Do you believe that they could though?**

17 A. It could help mitigate it.

18 **Q. Okay. To your knowledge did OPC oppose**  
19 **interim rates in the last CSWR case?**

20 A. I can't speak to that.

21 MS. MERS: Okay. Thank you.

22 JUDGE JORDAN: Recross from Indian Hills?

23 MR. COOPER: No questions.

24 JUDGE JORDAN: Redirect?

25 MR. SMITH: No redirect.

1                   JUDGE JORDAN: All right. Then anything  
2 before we go off the record?

3                   (No response.)

4                   JUDGE JORDAN: Not hearing anything, that  
5 being the case, we are scheduled to resume -- according  
6 to my Order dated September 27th, we are scheduled to  
7 reconvened on Thursday. That's Thursday. That's not  
8 tomorrow. We're going to skip Wednesday, and we're  
9 going to reconvene on Thursday, November 30th at  
10 9:00 a.m. right here in Room 310.

11                   And with that we will -- for the day we will  
12 adjourn and we will go off the record.

13                   (The hearing adjourned at 2:00 p.m. and will  
14 resume on Thursday, November 30, 2017 at 9:00 a.m.)

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## CERTIFICATE OF REPORTER

I, Patricia A. Stewart, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony taken in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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Patricia A. Stewart

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