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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
November 30, 2017
Jefferson City, Missouri
Volume 6

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

DANIEL R.E. JORDAN, Presiding,
SENIOR REGULATORY LAW JUDGE.
STEPHEN STOLL,
COMMISSIONER.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
ALARIS LITIGATION SERVICES

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APPEARANCES:

DEAN L. COOPER, Attorney at Law
Brydon, Swearingen & England, P.C.
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166
Dcooper@brydonlaw.com
FOR: Indian Hills Utility Operating
Company, Inc.

RYAN SMITH, Senior Public Counsel
Office of the Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
(573) 751-4857
FOR: Office of the Public Counsel
and the Public.

KEVIN A. THOMPSON, Chief Staff Counsel
NICOLE MERS, Assistant Staff Counsel
Missouri Public Service Commission
P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
(573) 751-3234
FOR: Staff of the Missouri Public
Service Commission.

1 (WHEREUPON, the hearing resumed at
2 9:01 a.m.)

3 JUDGE JORDAN: We are on the record.
4 The Commission is calling the action in File
5 No. WR-207-0259. That is in the matter of the
6 application for a rate increase for Indian Hills
7 Utility Operating Company, Incorporated.

8 Good morning, everyone. My name is
9 Daniel Jordan. I am the Regulatory Law Judge
10 assigned to this action, and this is the
11 evidentiary hearing, the third of three days, on
12 this application.

13 I'm silencing my cell phone right
14 now. I'm going to suggest everyone do the same. I
15 will not require you to turn them off. Just
16 silence them.

17 And that being done, let's take
18 entries of appearances, beginning with the
19 Applicant.

20 MR. COOPER: Thank you, your Honor.
21 Dean Cooper appearing on behalf of Indian Hills
22 Utility Operating Company, Inc.

23 JUDGE JORDAN: And for the
24 Commission's Staff.

25 MR. THOMPSON: Kevin Thompson and

1 Nicole Mers for the Staff of the Missouri Public
2 Service Commission.

3 JUDGE JORDAN: Thank you. And for
4 the Office of the Public Counsel.

5 MR. SMITH: Ryan Smith and Curtis
6 Schube for the Office of the Public Counsel.

7 JUDGE JORDAN: Now, are there any
8 preliminary matters to resolve before we begin
9 taking evidence?

10 MR. SMITH: Yes, Judge.

11 JUDGE JORDAN: I recall that there
12 was a matter of an exhibit and confusion as to
13 which pages were included and not included.
14 Mr. Smith, will you tell us the resolution of that
15 matter?

16 MR. SMITH: Yes, Judge. Yesterday an
17 exhibit was entered into the record by the company
18 which contained an attachment. Although that
19 attachment was not attached to the e-mail, it was
20 provided elsewhere in discovery. After consulting
21 with the company, we have no objection or no
22 problem with the entry of that exhibit.

23 JUDGE JORDAN: So that matter is
24 resolved?

25 MR. SMITH: From OPC's perspective,

1 yes.

2 JUDGE JORDAN: And from the company's
3 perspective?

4 MR. COOPER: It is also resolved,
5 yes.

6 JUDGE JORDAN: Very good. Thank you.
7 What other matters do we have pending before we
8 take evidence?

9 MR. SMITH: Yes. OPC stipulated as
10 to the entry or the admissibility of two exhibits,
11 which will be Exhibits 243 and Exhibits 244, and
12 OPC would like to offer those exhibits prior to the
13 calling of Mr. Barnes.

14 JUDGE JORDAN: I thought we had a 243
15 already, a confidential exhibit that was a
16 construction loan and agreement.

17 MR. SMITH: Okay. That is true, I'm
18 being told. So I believe I would renumber those
19 then of 244 and 245.

20 JUDGE JORDAN: Can you give me a
21 brief description of 244?

22 MR. SMITH: Yes. 244 represents the
23 day 90 preliminary report rate design schedule for
24 WR-2017-0259. It's basically the Staff's initial
25 audit numbers.

1 JUDGE JORDAN: And what is 245?

2 MR. SMITH: 245 is also a part of the
3 day 90 report. It represents work papers that were
4 produced by Mr. David Murray, or by Staff is more
5 accurate.

6 JUDGE JORDAN: By Staff. Okay. Now,
7 you're telling me that those -- that the
8 admissibility of those exhibits has been stipulated
9 to?

10 MR. SMITH: Yes, Judge.

11 JUDGE JORDAN: Would you like to
12 offer them now?

13 MR. SMITH: I would.

14 JUDGE JORDAN: Is there any objection
15 to either of those exhibits?

16 (No response.)

17 JUDGE JORDAN: I am not hearing any,
18 so I will enter Exhibits 244 and 245 into the
19 record.

20 (OPC EXHIBITS 244 AND 245 WERE
21 RECEIVED INTO EVIDENCE.)

22 JUDGE JORDAN: Anything else before
23 we resume the taking of testimony? Not seeing any
24 other matters before we resume testimony. Our
25 first topic this morning will relate to capital

1 structure, and I believe the first witness will be
2 Staff's once we've got the exhibits handed out.

3 (Witness sworn.)

4 JUDGE JORDAN: Let's have direct
5 examination.

6 MR. THOMPSON: Thank you, Judge.

7 MATTHEW BARNES testified as follows:

8 DIRECT EXAMINATION BY MR. THOMPSON:

9 **Q. State your name, please.**

10 A. Matthew Barnes.

11 **Q. Could you spell your last name for
12 the reporter?**

13 A. B-a-r-n-e-s.

14 **Q. How are you employed, Mr. Barnes?**

15 A. I am a Utility Regulatory Auditor
16 with the Missouri Public Service Commission.

17 **Q. And did you prepare or cause to be
18 prepared rebuttal testimony that has been marked as
19 Exhibit 106?**

20 A. Yes.

21 **Q. And do you have any changes or
22 corrections to that testimony?**

23 A. I do not.

24 **Q. If I were to ask you those same
25 questions today, would your answers be the same?**

1 A. Yes, they would.

2 Q. **And those answers are true and**
3 **correct to the best of your knowledge and belief?**

4 A. Yes, they are.

5 MR. THOMPSON: At this time I will
6 offer Staff's Exhibit 106.

7 JUDGE JORDAN: Any objection to Staff
8 Exhibit 106?

9 MR. COOPER: No objection.

10 MR. SMITH: No objection.

11 JUDGE JORDAN: Hearing no objection,
12 Staff Exhibit 106 is entered into the record.

13 (STAFF EXHIBIT 106 WAS RECEIVED INTO
14 EVIDENCE.)

15 MR. THOMPSON: Thank you, Judge. I
16 tender Mr. Barnes for cross-examination.

17 JUDGE JORDAN: Cross-examination from
18 Indian Hills?

19 MR. COOPER: No questions.

20 JUDGE JORDAN: Cross-Examination from
21 OPC?

22 MR. SMITH: Yes. Thank you.

23 CROSS-EXAMINATION BY MR. SMITH:

24 Q. **Mr. Barnes, good morning.**

25 A. Good morning.

1 Q. Will you agree that Staff is
2 recommending a -- that it recommends through your
3 testimony a return on equity of 9.34 percent?

4 A. Yes.

5 Q. Have you read the first and the
6 second settlement between Staff and the company?

7 A. I have not.

8 Q. Have you done any analysis to form an
9 opinion about whether 12 percent is a reasonable
10 return on equity?

11 A. I have not.

12 Q. Have you done any analysis to form an
13 opinion on whether 15.2 percent would be a
14 reasonable return on equity?

15 A. I have not.

16 Q. Have you done any analysis to form an
17 opinion about whether 15 to 21 percent would be a
18 reasonable cost of debt?

19 A. I have not.

20 MR. SMITH: No further questions.

21 JUDGE JORDAN: Questions from the
22 Bench?

23 COMMISSIONER STOLL: I have no
24 questions.

25 QUESTIONS BY JUDGE JORDAN:

1 Q. I have one question for you. I think
2 it's one question, and I will ask this to make the
3 record clear for persons like myself who are not
4 experts in capitalization of small water companies.

5 And I am looking at the testimony. I
6 see that there's discussion of hypothetical capital
7 structures and some discussion throughout the
8 prefiled testimony of the various witnesses as to
9 how this will help the company get to a more
10 standard or more helpful or better capital
11 structure as between debt and equity. Are you
12 familiar with the testimony that I'm talking about?

13 A. Is it my rebuttal testimony or --

14 Q. I'm talking about the entire stack of
15 testimony.

16 A. Generally.

17 Q. Fair enough. Because my question is
18 general. This idea that a hypothetical capital
19 structure encourages the company to reach that
20 capital structure, I want to check my
21 understanding. I take it that the idea is that if
22 rates are set on a certain structure, even if it's
23 not the real structure, if it's not the real
24 structure, then the company wants to get to that
25 structure because then it can earn its return on

1 **equity better. Is that accurate? Is that correct?**

2 A. Staff typically proposes a
3 hypothetical capital structure when the company is
4 not rated by a credit rating agency, such as Indian
5 Hills, they don't issue their own stock, they're
6 not publicly traded. So it's very difficult to --
7 it's kind of difficult to come up with an actual
8 capital structure.

9 So we propose a hypothetical that's
10 somewhat similar to other companies, such as
11 Missouri American. We can -- we look at Missouri
12 American, say how does that compare to this little
13 smaller company. Obviously they can't issue their
14 own stock. They're not -- they don't have a credit
15 rating. So we have to determine what credit rating
16 might be if they were rated and determine the
17 capital structure that way.

18 Since this company is pretty heavily
19 weighted in debt, it's pretty much a decision Staff
20 makes that 65 percent, is that reasonable,
21 65 percent debt versus any other structuring.
22 Typically, we also have a -- kind of some
23 guidelines to help us create the capital structure,
24 hypothetical capital structure.

25 In financial analysis they have a

1 small utility ROE rate of return methodology, kind
2 of a guideline to determine that. Hopefully the
3 company is able to achieve the capital structure
4 that the Commission approves and keep rates
5 reasonable for customers. I hope that answers your
6 question.

7 **Q. I think it does. I think it does.**
8 **I'm getting this -- I'm getting this impression**
9 **from the last sentence that you said, that if the**
10 **company achieves this capital structure as Staff**
11 **recommends, which is hypothetical now, but if it**
12 **becomes real, then that will make rates more just**
13 **and reasonable?**

14 **A.** I think that's a good way of putting
15 it.

16 JUDGE JORDAN: I think that's all the
17 questions I have for you. Did that generate any
18 recross from Indian Hills?

19 MR. COOPER: No, your Honor.

20 JUDGE JORDAN: Any recross from the
21 Office of the Public Counsel?

22 MR. SMITH: No.

23 JUDGE JORDAN: And any redirect from
24 Staff?

25 MR. THOMPSON: Thank you, Judge.

1 Yes.

2 REDIRECT EXAMINATION BY MR. THOMPSON:

3 Q. You were crossed by Public Counsel
4 with respect to analyses you had done to determine
5 whether or not various returns on equity were
6 reasonable, I believe was the language.

7 A. Uh-huh. Yes.

8 Q. Do you have any reason to believe
9 that a return on equity of 12 percent is not
10 reasonable?

11 A. I don't.

12 Q. And is it your understanding that the
13 actual cost of debt is 14 percent in this case?

14 A. Yes.

15 Q. And with respect to the questions you
16 were asked by Judge Jordan, did you intend to imply
17 that rates would not be just and reasonable until
18 such time as the company achieved the capital
19 structure proposed by Staff?

20 A. No. I was trying to explain what the
21 methodology is that Staff uses to come up with the
22 hypothetical capital structure.

23 MR. THOMPSON: Thank you, Mr. Barnes.
24 I have no further questions.

25 JUDGE JORDAN: You may stand down.

1 The Commission will next take up the
2 topic of capital structure, and we have a witness
3 from the Office of the Public Counsel.

4 MR. SMITH: The Office of the Public
5 Counsel would like to call Mr. Michael Gorman.

6 (Witness sworn.)

7 JUDGE JORDAN: Thank you.

8 MICHAEL GORMAN testified as follows:

9 DIRECT EXAMINATION BY MR. SMITH:

10 **Q. Good morning.**

11 A. Good morning.

12 **Q. Would you please state and spell your**
13 **name for the court reporter.**

14 A. My name is Michael Gorman,
15 M-i-c-h-a-e-l, G-o-r-m-a-n.

16 **Q. And by whom are you employed?**

17 A. Brubaker & Associates.

18 **Q. Have you filed testimony in this**
19 **case, WR-2017-0259?**

20 A. I have.

21 MR. SMITH: OPC has some premarked
22 exhibits, 213, 214, 215 and 216. I'd like to
23 approach.

24 (OPC EXHIBITS 213, 214, 215 AND 216
25 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

1 BY MR. SMITH:

2 Q. Mr. Gorman, do you have copies of
3 these exhibits representing your direct, rebuttal
4 and surrebuttal testimony?

5 A. Yes.

6 Q. And do you have any -- well, before I
7 get there, did you prepare or cause to be prepared
8 the testimony marked as Exhibits 213, 214, 215 and
9 216?

10 A. Actually, I do not have a copy of my
11 surrebuttal. I do have a copy of my direct and
12 rebuttal. Thank you. I do now.

13 Q. Do you have any corrections to be
14 made to your testimony?

15 A. I do not.

16 Q. If I were to ask you the same
17 questions again, would your answers be the same or
18 substantially the same?

19 A. They would.

20 MR. SMITH: Thank you. At this time
21 I would move to offer Exhibits 213, 214, 215 and
22 216.

23 JUDGE JORDAN: Exhibits 213, 214, 215
24 and 216 have been offered. Is there any objection
25 to any of those exhibits?

1 MR. COOPER: No objection.

2 MR. THOMPSON: No objection, Judge.

3 JUDGE JORDAN: 213, 214, 215 and 216
4 are entered into the record.

5 (OPC EXHIBITS 213, 214, 215 AND 216
6 WERE RECEIVED INTO EVIDENCE.)

7 MR. SMITH: OPC would tender this
8 witness for cross-examination.

9 JUDGE JORDAN: Cross-examination from
10 Staff?

11 CROSS-EXAMINATION BY MR. THOMPSON:

12 Q. Good morning, Mr. Gorman.

13 A. Good morning.

14 Q. Mr. Gorman, you are a hired
15 consultant; isn't that correct?

16 A. Yes.

17 Q. How much are you charging to be here
18 today to testify?

19 A. My hourly rate is \$250.

20 Q. Do you know how many hours you've put
21 into this case so far?

22 A. Not specifically, no.

23 Q. Who would know that?

24 A. Well, I would if I checked my
25 accounting records.

1 MR. THOMPSON: Thank you very much.

2 No further questions at this time.

3 JUDGE JORDAN: Cross-examination from
4 Indian Hills?

5 MR. COOPER: No questions, your
6 Honor.

7 JUDGE JORDAN: Questions from the
8 Bench?

9 COMMISSIONER STOLL: Yes. Thank you,
10 Judge.

11 QUESTIONS BY COMMISSIONER STOLL:

12 Q. Good morning, Mr. Gorman.

13 A. Good morning.

14 Q. In your direct testimony you talk
15 about the financing agreement containing a high
16 interest rate that prevents refinancing. It's my
17 understanding in the Stipulation & Agreement that
18 period of time is cut in half, but it's ten years,
19 I believe?

20 A. Yeah. I believe it reduced the term
21 of the loan -- or the term of the restrictions on
22 prepayment from 20 years down to 10.

23 Q. Yes. Yes. That is right, on the
24 prepayment. In your experience, is a loan like
25 that, is that unusual to have a prepayment, no

1 **prepayment before a ten-year period or you have to**
2 **pay that interest?**

3 A. Well, I mean, there are instances
4 where utilities are in a financially distressed
5 condition and they are required to pay a market
6 interest rate for a loan, and often they will not
7 have the borrowing capacity to dictate the terms of
8 the loan, and in those instances there can be
9 restrictions on calling bonds or the loan lending
10 institution requiring restrictions on prepayment.

11 So from that standpoint, it's not
12 that unusual. The issue that my colleague
13 Mr. Meyer found is related as much to the interest
14 rate as well as the second provision loan which
15 imposed the restrictions on prepayment. The
16 combination of an above-market interest rate with a
17 meaningful restriction on prepayment is a bit
18 unusual for this loan.

19 **Q. Again, what is your opinion of a**
20 **14 percent interest rate?**

21 A. I think it's significantly above
22 market cost of debt for distressed utility
23 companies.

24 **Q. And if you combine that with a**
25 **prepayment, what is the prepayment penalty,**

1 **that's --**

2 A. That prevents the utility from
3 refinancing the loan if they should strengthen
4 their financial position and credit standing and
5 bring the cost of capital of the utility down to a
6 market rate, a market rate that reflects a stronger
7 utility financial position.

8 So it is a meaningful impact on
9 retail customers to ask them to both pay an
10 above-market debt instrument cost and to also be
11 obligated to honor that debt instrument cost that
12 prevents prepayments or refinancing under an
13 extended period of time.

14 **Q. If you -- so in your testimony, I**
15 **believe when you talk about having a capital**
16 **structure, I guess you recommend a 50/50 capital**
17 **structure and you talk about working towards that**
18 **over time?**

19 A. Yes, sir. It's my understanding that
20 the new ownership of the utility are providing
21 benefits to customers by making investment in
22 utility infrastructure. So I think there is a
23 partnership between customers and the utility. So
24 in order to encourage that continued partnership, I
25 think there needs to be a recognition of the

1 investments being made, a fair rate of return on
2 those investments, and also provide the utility the
3 ability to actually build up its balance sheet
4 strength and create some financial standing and
5 integrity that allow it to borrow funds under less
6 restrictive conditions, particularly with arm's-
7 length transactions with lenders.

8 So in order to accomplish that, I
9 agree with Mr. Barnes on this standpoint. The
10 ratemaking process usually is to use a hypothetical
11 capital structure and overall rate of return, with
12 the understanding that the utility will take
13 advantage of that, retain the earnings that it
14 earns in this -- under these -- the rates that --
15 under the rate structure that will be produced with
16 that hypothetical capital structure, that they will
17 retain the earnings, they'll retain the full cash
18 flow, which would largely be depreciation expense
19 and earnings, to either reinvest in the utility
20 plant, to grow the invested capital, or to use
21 those cash flows to pay down more expensive
22 borrowing sources.

23 And the combination of those two
24 things will create an actual capital structure mix
25 for that utility that has both common equity and

1 debt and eventually will have a ratio of common
2 equity and debt that will reflect a stronger
3 business entity for the utility.

4 But importantly, in order to
5 accomplish that, there needs to be some commitment
6 on the utility that it will retain the cash flows
7 generated from that rate structure in the utility
8 to make the expectation actually happen or at least
9 create a fair opportunity for the expectation to
10 happen that the utility's financial strength will
11 improve over time.

12 **Q. How do you get that commitment from**
13 **the owners?**

14 A. You ask for it. If the intention is
15 to build this financial strength of the utility,
16 then it will be, in my experience, consistent with
17 a statement by the owners that that's what they
18 intend to do, or it could be part of the
19 stipulation saying if we set rates in this manner,
20 that you obligate yourselves to manage your
21 financial position to try to accomplish these
22 goals.

23 And that way there will be a growth
24 in the investment value to the shareholders without
25 getting current dividends from the utility over

1 some reasonable period of time, and that
2 reinvestment by investors then will be rewarded
3 later by a financially stronger entity that would
4 have greater market value. And customers would pay
5 the cost of that financial improvement but then
6 would be rewarded by more stable and a better
7 quality of utility service.

8 COMMISSIONER STOLL: Okay. Thank you
9 for that explanation.

10 QUESTIONS BY JUDGE JORDAN:

11 Q. I have a few questions for you if you
12 can be patient with my rudimentary understanding of
13 these matters. I noted in your testimony and in
14 testimony in response to your testimony a
15 disagreement over the value of the assets, I think
16 it was, on which the -- based your calculation of
17 the debt to equity ratio.

18 A. Well, it was the -- the actual
19 capital structure makes it on the liability side of
20 the balance sheet. It wasn't the assets per se or
21 the rate base, but rather it was the capital
22 structure used to develop the rate of return to
23 apply to rate base.

24 Based on my review of the audited
25 financial statements, the utility is almost

1 completely financed with debt. Whereas, the
2 utility witnesses were claiming that they had about
3 a, double check the numbers, but it's roughly
4 20 percent equity, 80 percent debt. I could not
5 confirm that. The witnesses relied on the company
6 for that -- for that understanding, but the
7 company's financial statements simply didn't
8 support it.

9 **Q. Okay. So you're standing by your**
10 **testimony as filed as far as those numbers?**

11 A. It is based on an audited financial
12 statement from the company, so yes.

13 **Q. Okay.**

14 A. That would be their actual capital
15 structure, not my recommended hypothetical capital
16 structure that --

17 **Q. That's the actual capital structure**
18 **as you saw it in the audited financial documents?**

19 A. Yes.

20 **Q. Okay. You also offered the**
21 **Commission, if we were talking about real estate**
22 **we'd call it a comparable, a proxy corporation, a**
23 **utility that you found to be similarly distressed**
24 **and offered that for the -- for a model for setting**
25 **return on equity. Those are probably the wrong**

1 **words, but I think you know what I'm talking about.**

2 A. Yeah. We're trying to get a sense of
3 what a fair balance between the investors and the
4 customers are, what rate of return would fairly
5 compensate investors but not charge rates to
6 customers that are excessive. That's kind of the
7 tradeoff in a regulated construct.

8 So with a utility that is in the
9 process of rebuilding its financial strength, if
10 they commit to making that a priority and a
11 transparent objective for the company, then
12 customers can pay a rate structure that gives them
13 that opportunity to build the financial strength.

14 So then the question is, what is a
15 fair rate of return to compensate the utility for
16 making those commitments to their customers and at
17 the same time resulting in a rate to customers
18 that's fair and reasonable?

19 **Q. Now, you found a company that you**
20 **believe serves as a proxy for those measurements;**
21 **is that correct?**

22 A. Well, I use proxies to estimate what
23 the distressed cost of debt for utility companies
24 is now, and from that -- and I largely relied on
25 Staff's methodology for estimating fair return on

1 equity, which was based on a risk premium type
2 approach that considered the distressed cost of
3 debt for utilities generally, and then added a
4 premium to reflect the higher equity costs for
5 utilities generally to come up with an appropriate
6 equity return which would correlate with a
7 distressed utility interest rate, and I accepted
8 Staff's methodology for developing that ROE.

9 JUDGE JORDAN: Okay. I think that's
10 all I have on that. I think that's all I have for
11 you. So do we have recross from Staff?

12 MR. THOMPSON: Yes, we do, Judge.
13 Thank you.

14 RECROSS-EXAMINATION BY MR. THOMPSON:

15 Q. Now, Mr. Gorman, do you understand
16 that the actual cost of debt in this case is
17 14 percent?

18 A. I understand that that's their actual
19 cost, but I do not understand that to be a market
20 rate for that debt.

21 Q. Right. And I haven't asked you that.
22 Just is that the actual cost, as far as you know?

23 A. As far as I know. Mr. Meyer looked
24 into that issue in detail on behalf of OPC. I
25 largely relied on his testimony for that.

1 **Q. Very good. Now, when you talk about**
2 **a market cost of debt, doesn't that imply that**
3 **there are other lenders out there who would lend at**
4 **a lower rate?**

5 A. It would imply that they would seek
6 borrowing instruments from all lenders that would
7 be willing to make a loan to them, yes.

8 **Q. Are you personally aware of any**
9 **alternative lender that is willing to lend money in**
10 **this case to this company?**

11 A. I am not, but again, that's an issue
12 that was dealt with significantly by Mr. Meyer.

13 **Q. I understand.**

14 A. I relied on his testimony in
15 concluding that he found that they did not consider
16 all possible options available to it for a market
17 interest rate on this loan.

18 **Q. Thank you, Mr. Gorman. You've**
19 **answered my question. Thank you.**

20 **You talked about the utility needing**
21 **to retain cash flows. Do you recall that**
22 **testimony?**

23 A. I do.

24 **Q. Are you aware that the Commission has**
25 **the authority under the statutes to require the**

1 **utility to maintain a reserve for contingencies?**

2 A. I think that's a little different
3 than what I had in mind. I'm looking at more in
4 terms of a financial plan that would allow for
5 building and strengthening a balance sheet. I
6 think a contingency reserve would be a set amount
7 of cash that would be maintained on the balance
8 sheet as an asset.

9 So I wasn't specifically aware of
10 that, but that is a different kind of concept than
11 the one I was recommending the Commission seek
12 agreement with the company on.

13 **Q. Would you agree that this company is**
14 **obligated to make significant payments on its debt**
15 **on a monthly basis?**

16 A. To the extent they have the
17 regulatory approval to execute that loan agreement,
18 then after it's fully executed that would be my
19 understanding, yes.

20 **Q. And let's say the Commission does**
21 **authorize the company to execute that loan**
22 **agreement. It's true, isn't it, that rates would**
23 **need to be sufficient to support those debt**
24 **payments?**

25 A. The Commission authorized that loan

1 agreement, that's true.

2 **Q. And if the revenue was not**
3 **sufficient, do you have any idea what would happen?**

4 A. They would default on the loan, I
5 presume.

6 MR. THOMPSON: Okay. I have no
7 further questions. Thank you.

8 JUDGE JORDAN: Any recross from
9 Indian Hills?

10 MR. COOPER: Just one item.

11 RECROSS-EXAMINATION BY MR. COOPER:

12 **Q. Mr. Gorman, I understand from one of**
13 **your DR responses that you've never participated in**
14 **or been involved in a rate case for an investor-**
15 **owned water or sewer utility providing service to**
16 **fewer than a thousand customers other than this**
17 **one; is that correct?**

18 A. For that size utility, yes. I have
19 been involved in many regulatory proceedings
20 dealing with small utilities, but not quite that
21 small.

22 MR. COOPER: Thank you. That's all I
23 have, your Honor.

24 JUDGE JORDAN: Any redirect from the
25 Office of the Public Counsel?

1 MR. SMITH: Yes, very briefly.

2 REDIRECT EXAMINATION BY MR. SMITH:

3 Q. Mr. Gorman, have you read the second
4 stipulation that was discussed with Commissioner
5 Stoll and yourself?

6 A. Yes.

7 Q. And what is the ROE in that
8 stipulation?

9 A. I believe it is 12 percent.

10 Q. Is that higher or lower than the cost
11 of debt that was agreed to?

12 A. That is lower than what they
13 represent to be their cost of debt, which is
14 14 percent.

15 Q. Is that consistent with the testimony
16 of Mr. D'Ascendis?

17 A. It's not, and it is not consistent
18 with Staff's methodology for estimating a return on
19 equity. Essentially agreeing to return on equity
20 at 12 percent in face of a debt cost of 14 percent
21 is clear acknowledgement that that cost of debt is
22 well above market cost. Debt instruments are
23 typically lower risk than equity investments, and
24 based on the company's own evidence, an equity
25 return of 12 percent would imply a market rate for

1 debt of less than 12 percent because it's a lower
2 risk security or loan. So it does suggest that the
3 company has acknowledged that a 14 percent interest
4 rate is above market.

5 MR. SMITH: No further questions.

6 JUDGE JORDAN: You may stand down.

7 THE WITNESS: Thank you.

8 JUDGE JORDAN: That is the last
9 witness that I have scheduled in this evidentiary
10 hearing. So let's talk about post-hearing
11 practice. I'm looking at the procedural schedule,
12 and it tells me that briefs on this issue are due
13 January 4. I take it the parties are interested in
14 just one round of briefs; is that correct?

15 MR. COOPER: Well, that's something I
16 wanted to discuss, your Honor. When we set that
17 initially, I think we had the now failed hope, I
18 guess, that some of the Spire dates would come open
19 and we would be trying this case later in the
20 schedule. Now that we have completed the hearing
21 the last week of November, it seems to me there is
22 time for initial and reply briefs, which I think
23 from my perspective would be beneficial. And I
24 guess I would like to propose initial briefs on
25 December 20 and reply briefs on January 4th, which

1 would still complete our briefing by the same date
2 as we had contemplated previously. But I have only
3 mentioned this as an issue to Mr. Smith and
4 Ms. Mers, and I have not proposed the dates to
5 them. If possible, going off the record for a
6 minute and talking about those would be a good
7 idea.

8 JUDGE JORDAN: Okay. I don't see a
9 need to commit to any dates right now. Well, let
10 me ask the parties. Are the parties confident and
11 feel confident they can commit to a schedule here
12 and now or would the parties like to discuss this
13 and file something later as a proposed amendment to
14 the schedule?

15 MR. THOMPSON: Judge, I would --
16 Staff is in favor of two rounds of briefs, number
17 one, and I don't see any difficulty with the
18 December 20th date. I do see some problems with
19 the January 4th date given the intervening
20 holidays, and I wonder if that couldn't be pushed
21 out several days.

22 JUDGE JORDAN: How does OPC feel
23 about these proposals?

24 MR. SMITH: I thought that we had
25 agreed to January 4th for a legal reason, that it

1 may have been the last possible date to present.

2 JUDGE JORDAN: According to the
3 Commission's regulation.

4 MR. SMITH: I think so. That would
5 be my only hesitancy which that, although certainly
6 allowing more time for writing I would be in favor
7 of, especially with the holidays. I think probably
8 the most prudent thing to do would be to file
9 something in the next couple days.

10 JUDGE JORDAN: Okay. Here's what I
11 will suggest. I see the Office of the Public
12 Counsel's point about the final submission of this
13 case in whatever form. I think the Commission's
14 regulation phrases it to the Commission, and that
15 date being January 4th according to that
16 regulation.

17 So I'll propose this: Why don't the
18 parties discuss this after the hearing and put
19 together a joint proposal, if they can, for an
20 amendment to the schedule to add a first round of
21 briefs, keeping in mind the regulatory time frame.

22 MR. THOMPSON: Judge, the Commission
23 can adjust that regulatory time frame.

24 JUDGE JORDAN: In that it can -- it
25 can certainly grant a variance from that time.

1 MR. THOMPSON: That is correct.

2 JUDGE JORDAN: I think it has that
3 time frame for a reason. So I'll refer the parties
4 to that. And I'll remind the parties that the
5 Commission would favor Proposed Findings of Fact
6 and Conclusions of Law within a brief. Very
7 helpful for framing the party's position, informing
8 the Commission of just what the parties think the
9 Commission should do.

10 And I think that's all that I have
11 for now. What else do the parties have before we
12 go off the record and adjourn this hearing?

13 MR. COOPER: Nothing from the
14 company.

15 MR. SMITH: Nothing from OPC.

16 MR. THOMPSON: Nothing from Staff.

17 JUDGE JORDAN: Before we go off the
18 record, I think I did not receive a copy of OPC's
19 two exhibits. Let me make sure I've got those. I
20 thought I saw OPC hand those to the court reporter.

21 MR. SMITH: Yes, I did.

22 JUDGE JORDAN: Very good. Just let
23 me get a copy of those.

24 MR. SMITH: Would you like any
25 additional copies for the other Commissioners?

1 JUDGE JORDAN: Just let me have a
2 couple and I'll reproduce those for the
3 Commissioners. I now have my copies of 244 and
4 245.

5 Anything else before we go off the
6 record and adjourn this hearing? Not hearing any,
7 we will adjourn the evidentiary hearing and we are
8 off the record.

9 (WHEREUPON, the hearing concluded at
10 9:38 a.m.)

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified Shorthand Reporter with the firm of Midwest Litigation Services, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the City of Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR

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