

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4 TRANSCRIPT OF PROCEEDINGS  
5  
6 Evidentiary Hearing  
7  
8 September 27, 2017  
9 Jefferson City, Missouri  
10 Volume 2  
11  
12 In the Matter of the Application )  
13 of Missouri-American Water Company )No. WU-2017-0296  
14 for an Accounting Order Concerning )  
15 MAWC's Lead Service Line Replacement )  
16 Program. )  
17  
18  
19  
20 JUDGE RONALD D. PRIDGIN, Presiding  
21 DEPUTY CHIEF REGULATORY LAW JUDGE  
22 DANIEL Y. HALL, CHAIRMAN  
23 STEPHEN M. STOLL,  
24 WILLIAM P. KENNEY,  
25 SCOTT T. RUPP,  
COMMISSIONERS  
  
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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: All right. Good morning.  
3 We are on the record. This is the hearing in File  
4 No. WU-2017-0296. I am Ron Pridgin. I'm the  
5 Regulatory Law Judge assigned to preside over this  
6 hearing that is being held on September 27th, 2017,  
7 in the Governor Office Building in Jefferson City,  
8 Missouri.

9 The time is about 8:34 a.m. I would like  
10 to begin getting oral entries of appearance from  
11 Counsel, please, beginning with Missouri  
12 American?

13 MR. COOPER: Thank you, your Honor.  
14 Dean Cooper from the law firm of Brydon, Swearngen  
15 & England, PC, and Timothy Luft for Missouri  
16 American Water Company appearing on behalf of  
17 Missouri-American Water Company. And the court  
18 reporter has our contact information.

19 JUDGE PRIDGIN: Mr. Cooper, Mr. Luft,  
20 Thank you. On behalf of DED, please?

21 MR. BEAR: Brian Bear, General Counsel on  
22 behalf of DED. The court reporter has my contact  
23 information already.

24 JUDGE PRIDGIN: Mr. Bear, thank you. On  
25 behalf of the Staff of the Commission, please?

1 MS. MERS: Nicole Mers and Kaci Aslin on  
2 behalf of Staff. Our information has been provided  
3 to the court reporter.

4 JUDGE PRIDGIN: Ms. Mers, Ms. Aslin, thank  
5 you. On of MECG?

6 MR. WOODSMALL: David Woodsmall on behalf  
7 of Midwest Energy Consumers Group.

8 JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
9 MIEC has waived any opening or any cross, but let  
10 me doublecheck. Any appearance for MIEC? Hearing  
11 none, any appearance for Consumers Council, please?

12 MR. COFFMAN: Yes, your Honor. Let the  
13 record reflect John B. Coffman on behalf of the  
14 Consumers Council of Missouri.

15 JUDGE PRIDGIN: All right. Mr. Coffman,  
16 thank you. Entry on behalf of the Office of Public  
17 Counsel, please.

18 MR. OPITZ: Thank you, Judge. For the  
19 Office of Public Counsel, I'm Tim Opitz. My  
20 address is P.O. Box 2230, Jefferson City, Missouri,  
21 65102.

22 JUDGE PRIDGIN: Mr. Opitz, thank you.  
23 Before we proceed to opening just a quick, I guess,  
24 road map for today. I planned on breaking sometime  
25 mid-morning. I'll try to go with the flow, look

1 for a natural break to try to give everybody a  
2 break sometime in the morning.

3 The Commission has agenda at noon, so we  
4 will need to break at least a few minutes before  
5 noon, and I will try to look for a natural break.

6 But if I have to tackle somebody in the  
7 middle of a syllable, I apologize, but the  
8 Commission does have agenda. And I will check with  
9 the Commission and -- and kind of look at their  
10 schedules.

11 We will probably resume sometime in the  
12 1:15 to 1:30 area to give the Commission time for  
13 agenda and a bit of a lunch break. And then I'm  
14 looking, of course, at a mid-afternoon break and  
15 then we'll see how far we get.

16 I don't anticipate going late unless we go  
17 painfully slow today because it is set for two  
18 days, but we'll just kind of play it by ear this  
19 afternoon.

20 Any questions or anything from the Bench  
21 or from Counsel before we proceed with opening  
22 statements? All right. Hearing nothing, we'll  
23 being -- we'll proceed with opening statements.  
24 And Missouri-American, Mr. Cooper, when you're  
25 ready, sir.

1 MR. COOPER: Thank you, your Honor.

2 OPENING STATEMENT

3 BY MR. COOPER:

4 MR. COOPER: Before I move forward, I  
5 have a hand-out. And what this is is diagrams that  
6 are contained in Schedule GAN02 of Mr. Naumick's  
7 testimony.

8 As you're aware the company is seeking  
9 deferral of accounting approval for its investment  
10 in the replacement of the customer owned lead  
11 service lines in this case.

12 Now, what portion of a service line is  
13 owned by the customer differs within  
14 Missouri-American's territory. On that hand-out  
15 that I -- that I just gave you, you can see that on  
16 the top half of the page, we have a diagram that  
17 shows the situation outside of St. Louis County.

18 On the bottom part of the page, we have a  
19 diagram showing what happens within St. Louis  
20 County. Without out -- outside of St. Louis  
21 County, the differentiation occurs approximately at  
22 the property line or the -- or the water meter  
23 location.

24 So to the left -- colors aren't great.  
25 But to the left of that dotted line, it's the

1 company owned portion. To the right of that dotted  
2 line, it's the customer owned portion.

3 That differs substantially within St.  
4 Louis County. You can see below the entire line  
5 from the main to the premise is the customer-owned  
6 part of the service line.

7 You'll hear people talking from time to  
8 time today about full lead service line  
9 replacements and partial lead service line  
10 replacements.

11 Again, going back to the outside of  
12 St. Louis County diagram, generally, when we talk  
13 about partial, we're talking about that portion  
14 from the main to the water meter, the property  
15 line.

16 And when we're talking about a full  
17 replacement, we're talking about from the main to  
18 the premise.

19 MAWC estimates, based upon its existing  
20 data from its tap cards and its field experience,  
21 that there are approximately 30,000 service lines  
22 in its territory that are lead.

23 Lead can enter the drinking water where  
24 pipes and plumbing fixtures that contain lead  
25 corrode or are disturbed.



1 Removal of lead service lines in contact  
2 with drinking water provides an opportunity to  
3 significantly reduce the risk of exposure to lead  
4 in drinking water.

5 Lead service lines can be encountered on  
6 the utility side or the customer side during water  
7 main construction and relocation projects or  
8 service line repairs and renewals.

9 Removing lead service lines in their  
10 entirety will compliment the other mitigation work  
11 the utility already performed such as providing  
12 stable water quality and treatment to minimize  
13 corrosion, compliance sampling and following good  
14 management practices.

15 The company's treatment and sampling  
16 efforts have effectively reduced potential lead  
17 exposure from drinking water. However, as the  
18 research regarding potential exposure to lead has  
19 been further developed and refined, the company has  
20 determined it should take additional steps to  
21 further mitigate potential customer exposure to  
22 lead and drinking water.

23 The growing body of research indicates  
24 that partial lead service line replacement and the  
25 physical disturbance of the lead service lines have

1 the potential to increase lead levels following  
2 replacements.

3 Now when MAWC encounters a lead service  
4 line during the course of its main replacement  
5 projects, the company believes all segments of lead  
6 in the service line should be replaced, both the  
7 portions owned by the company and the lead portions  
8 owned by the customer or the property owner.

9 Doing so is appropriate for safety reasons  
10 when the service line is determined -- is  
11 disturbed. Replacing such lead service lines in  
12 conjunction with main replacements is the most cost  
13 effective, efficient and responsible way to address  
14 the health and safety concerns associated with the  
15 lead service lines.

16 The lead service line replacements that  
17 have been performed and are projected to be  
18 performed from January 1st, 2017, through May 31st  
19 of 2018, which is approximately the operation of  
20 law date for the pending Missouri-American rate  
21 case will amount to approximately -- this is the  
22 number we show in Mr. LaGrand's rebuttal testimony,  
23 11.5 percent of net income as presented at MAWC's  
24 2016 annual report that was filed with the  
25 Commission.

1           MAWC proposes the following accounting for  
2   these expenditures. First, the portion of any such  
3   replacement where MAWC owns the service line would  
4   be recorded on MAWC's books like any other capital  
5   project.

6           The special pieces comes for this -- asks,  
7   really, in this case comes in regard to the  
8   customer-owned piece. For that piece, MAWC asks  
9   that the Commission grant it an accounting  
10   authority order allowing it to defer the costs  
11   associated with the replacement of these  
12   customer-owned lead service lines as follows.

13           One, to record and defer on the books the  
14   cost of all customer-owned lead service line  
15   replacements made from January 1st, 2017, through  
16   May 31st, 2018. To allow it to calculate a monthly  
17   carrying charge on the balance in that accounting  
18   for the weighted average cost of capital from the  
19   company's last general rate case. And to allow  
20   MAWC to defer and maintain these costs on its books  
21   until the effective date of the Report and Order in  
22   MAWC's pending general rate proceedings. And that  
23   any amortization should start with the effective  
24   date of that Report and Order.

25           You may note that I left out one request

1 that had been found in the company's application  
2 and shows up in -- in testimony and probably our  
3 statement of position as well.

4 But that was there had previously been a  
5 line requesting that this regulatory asset remain  
6 in place until all eligible costs are amortized and  
7 recovered in rates.

8 MAWC, in the testimony, has agreed that  
9 recovery is a question that needs to be addressed  
10 in the rate case and is dropping that aspect of its  
11 -- of its original request. Mr. LaGrand will be  
12 making that change when I put him on the stand.

13 Additionally, there has been an issue  
14 raised in regard to the use of the words  
15 "regulatory asset" in Missouri-American's request.

16 While I believe that description has been  
17 used in certain, probably several past Commission  
18 cases, MAWC does agree that the identified  
19 expenditures should be reported in NARUC Account  
20 186, which is termed Miscellaneous Deferred Debits  
21 and does not ask the Commission to make a GAAP  
22 regulatory asset determination.

23 If Missouri-American doesn't receive the  
24 requested accounting treatment, it presents it with  
25 a difficult situation. The likely outcome is that

1 Missouri-American may try to avoid areas with lead  
2 service lines and postpone main replacement  
3 projects with known lead service lines to avoid  
4 increased risk of potential exposure to lead  
5 associated with partial replacement.

6           However, there are several down-sides  
7 associated with that approach, to include the fact  
8 that the lane main replacement projects can  
9 increase the number of main breaks and leaks over  
10 time. This can be disrupting to customers and the  
11 community.

12           On the other hand, if the main  
13 replacements go forward without such replacements,  
14 a great opportunity for replacement is missed  
15 because, as I said previously, replacing lead lines  
16 in conjunction with main replacements when the  
17 streets are open, when the crews are there already  
18 is the most cost effective and efficient way to  
19 address the health and safety concerns associated  
20 with these lines.

21           Now, the Office of Public Counsel has  
22 taken a two-pronged approach to this issue. First,  
23 as of its Statement of Position, OPC has argued  
24 that MAWC's tariff does not permit it to replace  
25 customer-owned service lines. In other words,

1 company replacement of customer-owned service lines  
2 is unlawful.

3 And, second, OPC has proposed a pilot  
4 study associated with replacement of customer-owned  
5 lead service lines, which includes a cap on  
6 replacement costs and an AAO for only those going  
7 forward costs incurred by the company; thus,  
8 suggesting that those replacement costs already  
9 incurred and to be incurred between now and the  
10 effective date of an order should be expensed.

11 As to the tariff issue, we believe none of  
12 the tariffs cited by OPC prohibit MAWC from  
13 replacing customer-owned water service line.

14 This is for good reason as -- for example,  
15 in almost every main replacement in St. Louis  
16 County, lead or not -- and you'll recall from our  
17 diagram the customer owns every piece from the  
18 plain to the premise.

19 In almost every replacement, it's  
20 necessary to replace at least some portion of that  
21 customer-owned water service line in order to  
22 complete the main replacement. So it just is a  
23 normal course of business the company is in that  
24 business to some extent.

25 Those partial customer-owned service line

1 replacements are -- are treated as restoration  
2 costs under the USOA similar to costs to replace  
3 disturbed pavement, pavement base, sidewalk,  
4 curbing and landscaping as well as costs related to  
5 damage to the property of others and other general  
6 costs related to restoring the areas to their prior  
7 conditions.

8           While the company does not own that  
9 property being restored and others would be  
10 responsible on a going forward basis for their  
11 maintenance or repair, the company still incurs  
12 restoration costs as a part of the project.

13           For safety reasons, including the partial  
14 replacements of the customer-owned service lines,  
15 the restoration cost is appropriate when the  
16 service line is disturbed or damaged during main  
17 replacements.

18           Again, we do not believe that lead service  
19 line replacements violate MAWC's tariff. Now, the  
20 pilot study posed by OPC is quite extensive. It's  
21 described as a two-year pilot study to explore the  
22 feasibility, legality and associated policy  
23 implications of full lead service line replacement  
24 across MAWC's entire service territory and the  
25 State of Missouri with the results presented to the

1 Missouri Public Service Commission, Missouri  
2 Legislature and the Missouri Governor's Office for  
3 consideration.

4 The program would include five policy  
5 tracks. An Advisory Committee led by a third party  
6 consultant who is responsible for issues on the  
7 final report taking into account a large range of  
8 considerations, scoping analysis to provide lead  
9 service line estimates and information and the  
10 feasibility of developing a repository to contain  
11 lead service line information and water testing  
12 results, a two-year lead service line replacement  
13 pilot program that includes testing and modeling to  
14 verify the length between lead service line removal  
15 and lead abatement in drinking water.

16 A review and summary of the Advisory  
17 Committee's thoughts on communications, disclosure,  
18 prioritization and implementation and ancillary  
19 considerations such as potential job creation,  
20 lead paint and soil abatement.

21 It's MAWC's position that the proposed  
22 study would result in unjust delay, costs and  
23 limitation on the replacement process.

24 Missouri-American Water Company Witness  
25 Naumick detailed the extensive and detailed



1 research and study that has already been performed  
2 by many Government organizations, private  
3 foundations and other groups to include the Lead  
4 Service Alignment Replacement Collaborative.

5 Hiring a third party to essentially repeat  
6 this work makes little sense. However, the company  
7 certainly will continue to seek constructive input  
8 on specific key areas where such input from  
9 relevant stakeholders can help optimize the  
10 effectiveness of the program that it proposes.

11 Moreover, in -- in regard to the pilot  
12 study, it's unclear what will happen at the end of  
13 the proposed study. OPC proposed that it will be  
14 presented, as I said, to Commission, to the General  
15 Assembly, to the Governor's Office for  
16 consideration.

17 What would happen next and when would be  
18 anybody's guess. I don't think there's any  
19 compelling reason for the Commission to start an  
20 independent march down the study path.

21 Now, in closing, I'd leave you with this:  
22 OPC discusses many issues beyond the potential  
23 exposure to lead and drinking water, including the  
24 history of lead contamination, other conduits of  
25 human lead exposure and the regulatory history of

1 -- of lead.

2 David LaGrand, who is the head of American  
3 Water Works Association has stated, If there's one  
4 lesson to be learned from the Flint crisis, it is  
5 this.

6 Our communities will be safer in the  
7 long-run with no lead pipes in the ground. Removal  
8 of lead service lines is the one pathway of human  
9 exposure that a water utility can resolve.

10 And this is what Missouri-American is  
11 proposing to do in an aggressive and efficient  
12 manner through its proposed lead service line  
13 replacement program. Thank you.

14 JUDGE PRIDGIN: Thank you. Any Bench  
15 questions?

16 CHAIRMAN HALL: Yes. Good morning.

17 MR. COOPER: Good morning.

18 CHAIRMAN HALL: I'm looking at the tariff  
19 that's at issue here.

20 MR. COOPER: I'm sorry, Chairman. I'm  
21 going to go off my tariffs.

22 CHAIRMAN HALL: And it's -- Sheet 17,  
23 which is the last page.

24 MR. COOPER: Yes.

25 CHAIRMAN HALL: It says, Repairs or

1 maintenance necessary for the customer water  
2 service line, dot, dot, dot, shall be the  
3 responsibility of the customer. Is it the  
4 company's position that replacement is different  
5 than repair or maintenance?

6 MR. COOPER: It's really the company's  
7 position that while the tariff sets out an  
8 obligation for the customer, and, certainly, the  
9 company could -- could enforce that in terms of  
10 forcing the customer to make those expenditures,  
11 that this doesn't prohibit the voluntary  
12 replacement that -- that the company has proposed.

13 That goes back a little bit to what I said  
14 in the opening statement. There's some of that --  
15 setting aside the lead service line replacement  
16 program, there's some of that that goes on every  
17 time they go down the street, especially in  
18 St. Louis County.

19 The process of disconnecting the service  
20 line from the main, installing the main, getting  
21 that back in almost always. And Mr. Aiton would be  
22 a better -- would be the appropriate witness to  
23 talk to about that.

24 It almost always is going to require some  
25 repair of that customer-owned service line. I

1 think it -- I don't think there's anybody that --  
2 that would argue that the company should, after  
3 doing that, send a bill to the -- to the customer  
4 for that.

5 CHAIRMAN HALL: Is -- is the company's  
6 request for an AAO for this customer-owned lead  
7 service line similar to the rate-making treatment  
8 that the company receives for restoration work  
9 generally?

10 In other words, when -- when -- when the  
11 company has to perform a restoration work on  
12 customer property, is -- what is the rate-making  
13 treatment of that?

14 MR. COOPER: So that rolls into, as I  
15 understand it, a plant account and gets treated  
16 like other plant investment -- utility plant  
17 investment.

18 So, ultimately, it would be a part of rate  
19 base and considered in rates as a -- in that  
20 fashion. It is similar, what the company is  
21 requesting, in that that's the goal.

22 The goal is to treat these expenditures in  
23 a way that's similar to investments the company  
24 would make in -- in its own plant, in plant that it  
25 would own on a going forward basis.

1 CHAIRMAN HALL: Okay. When did -- when  
2 did the company start this program?

3 MR. COOPER: Primarily this calendar year,  
4 2017.

5 CHAIRMAN HALL: And -- and how much money  
6 has it expended to date?

7 MR. COOPER: Well, I'm not sure I can give  
8 you the date, Chairman. It's -- it's projected  
9 that it will be around \$2 million in this -- by the  
10 end of this calendar year.

11 CHAIRMAN HALL: And what is the projection  
12 for how much it would include up to the effective  
13 date of new tariffs in the currently pending rate  
14 case?

15 MR. COOPER: Well, I would ask that you --  
16 Mr. LaGrand would be our witness that would have  
17 that number, a more specific number than I would.

18 In his rebuttal testimony, on page 3, at  
19 that point in time, it was estimated to on  
20 8.9 million.

21 CHAIRMAN HALL: Well, what do you -- what  
22 do you believe the appropriate standard is that the  
23 Commission should employ in making this decision?

24 MR. COOPER: Well, in our application, I  
25 think -- and some of our direct testimony, we've --

1 we've circled around the -- the more traditional.  
2 That's what I would call the AAO standard,  
3 extraordinary standard that's applied to costs to  
4 be deferred.

5 CHAIRMAN HALL: So extraordinary and  
6 materiality?

7 MR. COOPER: Well, materiality is  
8 interesting. In this case, I think it truly --  
9 it's material under anybody's -- under the  
10 definitions that have been thrown out before  
11 because it's greater than 5 percent.

12 Having said that, there's some -- there is  
13 a Commission case, in fact, as a past  
14 Missouri-American case that points out that while  
15 there's a materiality standard in the gas and  
16 electric USOA, there's not one in the NARUC USOA  
17 for water companies.

18 So I hesitate to say that's necessarily a  
19 standard for a water company. However, in this  
20 case, it's -- the facts kind of make it -- that  
21 legal question I won't say irrelevant, but make it  
22 less important because they clearly exceed that --  
23 that percentage anyway.

24 CHAIRMAN HALL: Is -- is -- is American  
25 Water engaging -- not -- Missouri-American, but is

1 -- is American Water or any of the subsidiaries  
2 nation-wide doing a program similar to what  
3 Missouri-American is doing?

4 MR. COOPER: The answer is yes. And  
5 Mr. Naumick would be most familiar with that.

6 CHAIRMAN HALL: And -- and would he be  
7 able to explain the -- the situation in  
8 Pennsylvania and the -- the agreement that was  
9 reached there, the status of that?

10 MR. COOPER: He would certainly be the  
11 right person to ask. But he'll have to tell you  
12 what his level of knowledge is in regard to  
13 Pennsylvania.

14 CHAIRMAN HALL: Would -- would -- would --  
15 would he also be the one to -- to ask -- no. Never  
16 mind. Okay. I have no further questions.

17 JUDGE PRIDGIN: Thank you. Further Bench  
18 questions?

19 COMMISSIONER STOLL: No questions.

20 COMMISSIONER COLEMAN: Thank you.

21 JUDGE PRIDGIN? Mr. Cooper, thank you.  
22 DED, Mr. Bear, when you're ready, sir.

23 MR. BEAR: Thank you, your Honor.

24 OPENING STATEMENT

25 BY MR. BEAR:

1           The Department of Economic Development's  
2   concerns have always been, as it says in the name,  
3   economic development. And what we've empirically  
4   known is that if there is a health crisis or an  
5   environmental concern that, oftentimes, that can  
6   undermine the ability for DED and the State to have  
7   economic growth.

8           We've seen this in Flint and kind of seen  
9   that whenever there is a concern about health and  
10   safety in a community because, ultimately, the  
11   foundation of every economic development proposal  
12   that we do in the Department is based upon a strong  
13   community incentive cycle.

14           And it's become clear that when a crisis  
15   does occur and people feel that they do not have  
16   safe and adequate access to drinking water, the  
17   cycle of this investment is real and  
18   non-controversial.

19           In OPC's testimony, it describes the issue  
20   with Freddie and Fannie, Freddie Mac and Fannie Mae  
21   not accepting mortgages out of Flint, Michigan, in  
22   the aftermath of the lead crisis in their water  
23   supply.

24           Thankfully, we don't have a crisis today.  
25   But the company has presented an option to the



1 Commission to start addressing it before it becomes  
2 an outright crisis. And, ultimately, DED's  
3 position is that that concern is reasonable. And  
4 it should be acted upon.

5 While DED takes no position on the  
6 accounting treatment that should be used in this  
7 case, whether it's an AAO or perhaps a debit  
8 company, it's clear that the company is trying to  
9 do the right thing here and is engaging in the type  
10 of behavior that we would like from a regulated  
11 entity; that is, being proactive, identifying a  
12 problem and providing a solution today rather than  
13 one that will be arrived at after two years of  
14 study.

15 That's not to say that this is the perfect  
16 proposal A1 from the company to address this risk.  
17 There are certain concerns that DED does have about  
18 moving forward with customer-owned replacement as  
19 they go through main water replacement.

20 And that's -- you know, there's really no  
21 focus on the highest risk areas of exposure of lead  
22 throughout the State. There's also concerns that  
23 we have about the allocation of costs.

24 While it may be appropriate to allocate  
25 and socialize those costs for all residential

1 ratepayers for low income individuals, that  
2 argument starts to lose some merit when we start to  
3 think about high income owners and perhaps other  
4 types of sophisticated entities with the resources  
5 to do lead service cost replacement.

6 But perfect should not be the enemy of the  
7 good. And DED believes that the company has  
8 provided a very reasonable way to go about dealing  
9 with this until we move to the next rate case.

10 With that being said, there is some merit  
11 to a pilot study in order to figure out what the  
12 best way is to address this problem.

13 But the study that's been proposed by OPC  
14 is a little bit too grand in cost and in scope.  
15 And to the extent that a study would be useful in  
16 order to craft public policy, it should be reigned  
17 in with some very reasonable guideposts to prevent  
18 studies for all.

19 I think at the core of this concern is  
20 that Missouri-American should not pay for a study  
21 that defines the State's policy at large. That's  
22 something for the General Assembly to appropriate  
23 and to be carried out in a manner that's not just  
24 going to burden one class of ratepayers for one  
25 regulated utility.

1           Instead, the study should be limited only  
2   to Missouri-American's areas that they service. It  
3   should be limited in time and scope and, also, in  
4   money.

5           One of the concerns that DED has observed  
6   is that taking a percentage of the amount of  
7   recovery that's being proposed by OPC could present  
8   a study cost approaching seven figures.

9           And, frankly, when we look at other  
10   studies that DED has done and the Division of  
11   Energy has done on other regulated utility rates,  
12   it's just far and above even the most ambitious  
13   scopes as far as costs.

14          DED would propose a -- a pilot study of no  
15   more than \$150,000 limited in scope, limited in  
16   time. But that study should not defer action  
17   today.

18          And that's why the company's proposal to  
19   move forward in the way that it has presented today  
20   is appropriate until we figure out what the perfect  
21   is. For now, the good is good enough.

22          Today, we will have testimony -- hopefully  
23   today we'll have testimony from Martin Hyman, who  
24   will present these views. Beyond the views just  
25   expressed DED has no further view about accounting

1 treatments or other types of legality of the AAO in  
2 this context. Thank you.

3 JUDGE PRIDGIN: Mr. Bear, thank you. Any  
4 Bench questions?

5 CHAIRMAN HALL: No questions.

6 COMMISSIONER STOLL: No questions.

7 JUDGE PRIDGIN: Okay. Thank you. From  
8 staff? Ms. Mers, when you're ready.

9 MS. MERS: Good morning, Judge. Good  
10 morning, Commissioners.

11 COMMISSIONER STOLL: Good morning.

12 COMMISSIONER COLEMAN: Good morning.

13 OPENING STATEMENT

14 BY MS. MERS:

15 MS. MERS: I have here at Staff's table  
16 the route cause of all the issues you're going to  
17 hear about today.

18 And that's such a small pipe to cause such  
19 a great deal of controversy. That right there is  
20 a lead pipe that has been pulled from a service  
21 line replacement during a water main replacement in  
22 St. Louis County.

23 That's the one if you'd read the testimony  
24 is Staff Witness Jonathan Dallas that he described  
25 and was a part of it.

1           And pipes such as this all over St. Louis  
2   County, all over Missouri, all over the nation have  
3   become a focal point in the fight to end lead  
4   poisoning because there's grave human health  
5   impacts that elevated blood levels cause.

6           And as a nation, we have developed  
7   programs to eradicate lead in paint, lead in  
8   gasoline and lead in soil.

9           And now after the events of Flint,  
10   Michigan, we have to face the most common way that  
11   lead poisoning can get into our drinking water,  
12   which is through the lead service pipelines.

13          And this must be addressed because study  
14   after study for the past decade has consistently  
15   demonstrated that there is no safe level of lead.  
16   There's just absolutely no safe level of lead.

17          And because we are at the forefront of  
18   exploring possible ways to safely remove the  
19   numerous lead service lines in a way to mitigate  
20   costs to ratepayers, the Commission is presented  
21   with the case before you today.

22          Missouri-American's request is a  
23   significant extraordinary undertaking.  
24   Missouri-American is proposing to remove the  
25   customer-owned portion of the lead service line as

1 part of their main replacement activity.

2 Generally, customers are responsible for  
3 their maintenance and repair of their portion of  
4 the service line. But Missouri-American is  
5 requesting recovery for undertaking removal of lead  
6 service lines owned by the customer as an  
7 increasing body of research recommends full lead  
8 service line removal as a best practice because  
9 that reduces the risk of a lead contamination  
10 event.

11 Replace only the portion of a lead service  
12 line that's owned by the company but leaving the  
13 customer-owned portion of the lead service line  
14 intact has been shown to increase lead levels in  
15 the water because the protective scaling is  
16 dislodged.

17 And Ms. Aslin can show you my handy prop a  
18 little closer because she can show you where this  
19 pipe, when it was cut, this dislodged scaling has  
20 been knocked loose, which is what increases the  
21 lead leeching into the drinking water. So if  
22 anybody wants to touch it, we have gloves.

23 But -- and -- and obviously, that gross  
24 build-up is actually what's, you know, good for  
25 human health, which is shocking to me. But that's

1     what's protecting the lead from leeching into your  
2     water.

3             Although replacing the entire lead service  
4     line is a best practice, the reality is that many  
5     homeowners will not be able to undertake such a  
6     project due to the prohibitive cost. And,  
7     therefore, the synergy of Missouri-American's  
8     planned main replacements, they can be lost.

9             So Missouri-American is here today to  
10    request the AAO, which staff supports, that allows  
11    them an opportunity, but it does not guarantee them  
12    a recovery of costs that's they have or will have  
13    expended from January 2017 to May 31st, 2018, in  
14    replacing customer-owned lead service lines during  
15    the regularly scheduled main replacements, which  
16    both mitigates the potential for a lead crisis, but  
17    also achieves practical cost reductions by taking  
18    advantage of the construction work that's already  
19    been completed or started.

20            As Staff Witness Jonathan Dallas notes in  
21    his testimony, this is both the logical time to  
22    replace customer-owned portions of the service line  
23    as both the service line and the main have already  
24    been unearthed and exposed.

25            That is common sense to complete all the

1 work at once rather than re-excavating the property  
2 and the road in the future at a greater expense.

3 Now, the opponents to  
4 Missouri-American's proposal seems to suggest that  
5 Missouri-American should re-bury any lines it  
6 encounters until more information about the dangers  
7 of lead and what exact amount of lead poisoning you  
8 may receive from a partial line service replacement  
9 exist.

10 The testimony cites some various unknowns  
11 such as the precise, exact costs that lead service  
12 line replacements could entail in the future.

13 Firstly, Missouri-American's proposal is  
14 not, as OPC claims, an indefinite blank check. It  
15 is, rather, a request for an accounting authority  
16 to book as an asset money that has or will be  
17 expended from January 1st, 2017, to May 31st, 2018.

18 Any ongoing lead service replacement  
19 program expenses beyond those points should be  
20 proposed as part of Missouri-American's general  
21 rate case.

22 Second, Staff used Missouri-American's  
23 proposal as akin to insurance. You don't get  
24 property insurance once you've been hit by the  
25 hurricane. You do it before the hurricane as to



1 minimize your damages and expense.

2 So even if we disregard the expert opinion  
3 of Missouri-American's technical witnesses in  
4 coming up with their figures for the amount of lead  
5 pipes in the service territory and you look at  
6 OPC's proposed high end of \$180 million in  
7 preventive cost, that is still significantly lower  
8 than the \$480 million dollars in economic and  
9 health damages that Flint, Michigan, has incurred  
10 since its life crisis.

11 And that doesn't include the drop in  
12 average life expectancy for Flint residents, IQ  
13 impacts, and approximately 198,276 fetal deaths and  
14 miscarriages due -- from 2013 to 2015 due to lead  
15 exposure.

16 The best time to mitigate damages is not  
17 in the middle of a lead crisis. With no safe limit  
18 for lead, that point, it is too late.

19 I mean, the agency that's charged with  
20 representing the public, I mean, it's a little  
21 puzzling to me that they're suggesting that a known  
22 human health hazard like lead service lines should  
23 remain in the ground.

24 I think a refusal to allow lead service  
25 line replacements without OPC's necessary and

1     costly studies that would be born solely by  
2     Missouri-American ratepayers, as we stated, makes  
3     the perfect enemy of the good because even OPC's  
4     testimony admits that the practice of partial lead  
5     service line replacements is flawed.

6             Commissioners, it's really important today  
7     to remember the question before you for your  
8     consideration is whether or not the company has  
9     met the standard to receive your authorization on  
10    a specific accounting authority treatment for  
11    dollars that the company has already spent or may  
12    spend over the next six months.

13            An AAO is not a guarantee recovery of  
14    these dollars, nor does your decision today  
15    regarding the AAO approve or deny the company from  
16    continuing the lead service line replacement that  
17    it has proposed.

18            OPC has focused much about what it thinks  
19    the company is doing could be better, but has not  
20    put forward credible testimony on why an AAO should  
21    noted be granted.

22            So in conclusion, Staff supports  
23    Missouri-American's request for an AAO as replacing  
24    the customer-owned portion of the service line as  
25    an extraordinary, non-recurring action that has a

1 significant impact on their earnings if not allowed  
2 to be considered for recovery.

3 Staff believes that since these projects  
4 are similar to plant and service costs during the  
5 period a plant is under construction and not  
6 eligible for inclusion of rate base, we recommend  
7 that it be treated like AFEDC and its carrying  
8 costs should be calculated using American Water  
9 Works company's short-term debit rate. I'm also  
10 here to answer any questions that you might have.

11 JUDGE PRIDGIN: Thank you. Bench  
12 questions?

13 CHAIRMAN HALL: Good morning.

14 MS. MERS: Good morning.

15 CHAIRMAN HALL: Should the probability of  
16 recovery in rates be one factor that we take into  
17 account when determining whether or not an AAO is  
18 appropriate?

19 MS. MERS: To -- to my knowledge, I think  
20 that there has been AAOs granted with a probability  
21 of recovery has not been assured.

22 I'm thinking of the -- I believe the  
23 Joplin tornado case where that has occurred, AAO --  
24 granted the AAO before recovery was not granted in  
25 the -- in the later rate case.

1           So I -- I don't think that that is the  
2   end-all be-all standard of looking at it as if you  
3   grant this today that it --

4           CHAIRMAN HALL: Well, I would agree that  
5   it shouldn't be the be-all standard, but is it a  
6   factor that we should take into account?

7           MS. MERS: I believe you can take it into  
8   account.

9           CHAIRMAN HALL: Should we take it into  
10   account?

11          MS. MERS: I think you should with the  
12   recognition that a -- an approval of the AAO today  
13   would not mean that every single cost captured are  
14   incurred.

15          CHAIRMAN HALL: Right. It wouldn't -- it  
16   wouldn't bind a future Commission.

17          MS. MERS: Right. Yes. And I don't even  
18   think it would bind this Commission if in the rate  
19   case you find that it is --

20          CHAIRMAN HALL: We will be a future  
21   Commission.

22          MS. MERS: But yeah. And I don't think  
23   that a -- if there's critical issues that any  
24   decision today would -- would tie you down to full  
25   recovery of - of an AAO granted.

1           CHAIRMAN HALL: Does Staff has any  
2 thoughts about what type of criteria -- criteria  
3 the Commission should look at when determining  
4 whether or not recovery is appropriate? Assuming  
5 -- assuming that we grant the AAO and then comes  
6 rate case and -- and the Commission has a -- has to  
7 determine whether or not to allow recovery in  
8 rates, what -- what should the Commission look at  
9 in making that determination?

10           MS. MERS: I would point to the Staff --  
11 or it's the Office of Public Counsel v. PSC 1992  
12 case that talks about the unusual reoccurring  
13 events and transactions of significant effect.

14           I think that if the AAO once deferred  
15 still remain has the significant impact that -- at  
16 -- at the time of the request that it's thought to  
17 have that that makes it more suitable for recovery.  
18 That -- that would be my judge post, guidepost, I  
19 guess.

20           CHAIRMAN HALL: Okay. I have no further  
21 questions. Thank you.

22           JUDGE PRIDGIN: Thank you. Other Bench  
23 questions? Commissioner Rupp?

24           COMMISSIONER RUPP: Yeah. Good morning.

25           MS. MERS: Good morning.

1 COMMISSIONER RUPP: I was listening on --  
2 on my drive in. So if you covered this -- it cut  
3 out a few times, so if you covered this, I  
4 apologize.

5 But OPC has argued that -- that you guys  
6 would be violating your tariffs and you would need  
7 waivers if you were to move forward. That -- what  
8 is -- what is Staff's position that -- would you  
9 need to grant waivers to the company if -- if we  
10 approve this?

11 MS. MERS: Staff does not believe or read  
12 the tariff to prohibit Missouri-American's  
13 program. I think that they're simply offering a  
14 plumber, contractor to work on the customer service  
15 line in conjunction with the project they're  
16 already entailing.

17 But I do think that if the Commission is  
18 concerned about that, that it is a very simple case  
19 then as a part of this case, proposed tariff  
20 language to be proposed and ordered.

21 I don't think a clarification, if that's a  
22 concern of the rights and responsibilities of the  
23 obligation Missouri-American and the customers have  
24 would be inappropriate as a part of this case.

25 COMMISSIONER RUPP: All right. Great.

1 Thank you.

2 JUDGE PRIDGIN: Thank you. Further Bench  
3 questions? All right. Ms. Mers, thank you.

4 MS. MERS: Thank you.

5 JUDGE PRIDGIN: Opening for MEGC?

6 Mr. Woodsmall, when you're ready, sir.

7 OPENING STATEMENT

8 BY MR. WOODSMALL:

9 MR. WOODSMALL: Good morning. David  
10 Woodsmall appearing on behalf of the Midwest Energy  
11 Consumers Group.

12 I'm here today to discuss MEGC's thoughts  
13 on Missouri-American's lead service line  
14 replacement proposal and the associated cost  
15 recovery.

16 The important thing to remember about this  
17 is that Missouri-American is seeking to replace  
18 customer-owned lines. And instead of charging that  
19 customer for the replacement of their line,  
20 Missouri-American wants to socialize those costs,  
21 build them in rates and charge everybody else. Not  
22 the customer. Everybody else.

23 There's an old expression, Fools rush in  
24 where angels fear to tread. Based upon the public  
25 outrage on the lead in the drinking water in Flint,

1 Michigan, Missouri-American proposes to rush in  
2 with the solution in Missouri.

3 Rather than study the situation, determine  
4 the scope of the problem and the most cost  
5 effective solution to the problem,  
6 Missouri-American simply asks for a blank check to  
7 replace all the customer-owned lead service lines  
8 in its service territory.

9 Missouri-American has not considered the  
10 fact that many of these homes had internal piping  
11 and appliances that include lead and lead solder.  
12 Therefore, there is a significant question for  
13 whether the replacement of the customer-owned lead  
14 service line will even solve this problem.

15 Even more disconcerting, Missouri-American  
16 has not considered other solutions. For instance,  
17 should we instead look to lead water filters  
18 similar to those used in Flint as well as numerous  
19 other locations around the State of Missouri?

20 After all, if the lead is leeching in  
21 because of piping in the customer's house, why  
22 replace the service line? Give them filters to  
23 solve the problem. None of those solutions have  
24 been considered.

25 MECG -- Missouri-American has simply



1 reached for the solution that will inflate the  
2 earnings of its shareholders, the replacement of  
3 customer-owned service lines.

4 This is potentially a large problem that  
5 needs study and clear thinking from individuals  
6 with simply more than shareholder profits. It  
7 takes deep thinkers that want to fix the potential  
8 problems in the most efficient manner possible.

9 For this reason, MECG supports OPC's  
10 proposed pilot program. Dr. Marke can answer more  
11 questions about this program. But at a basic  
12 level, it seeks to study the problem, determine the  
13 scope of the problem, how many service lines we're  
14 looking at and consider potential solutions as well  
15 as the cost.

16 MECG does not make this recommendation  
17 lightly. Suffice it to say, this has involved  
18 considerable soul-searching on the part of my  
19 clients.

20 Bottom line, MECG feels that it is better  
21 to study this problem rather than simply throwing a  
22 \$180 million check at Missouri-American to replace  
23 service lines that may, in actuality, exacerbate  
24 the problem.

25 So what is MAWC actually seeking?

1 Missouri-American wants to replace all  
2 customer-owned service lines and socialize the  
3 costs of replacing those lines by including the  
4 cost in rates.

5 In this way, Missouri-American  
6 shareholders earn a hefty return for this  
7 investment. All total, shareholders will earn a  
8 return, including taxes, of approximately 11 and a  
9 half percent.

10 What is the potential scope? As reflected  
11 in its direct testimony, Missouri-American  
12 estimates there are 30,000 lead service lines in  
13 its service area.

14 Initially, it estimated that the cost may  
15 be \$3,000 per service line. Its surrebuttal, it  
16 has raised that estimate and now believes it will  
17 cost \$6,000 per service line.

18 Therefore, we are talking about  
19 Missouri-American investing \$180 million to replace  
20 piping that belongs to the customer.

21 Missouri-American investing \$180 million  
22 to replace piping and charging all other customers  
23 for that cost.

24 It is important to note, also, that  
25 Missouri-American did not wait for Commission

1 approval to begin replacing these service lines.

2 Instead, it just jumps in.

3 While this case was filed in May,  
4 Missouri-American began unilaterally replacing  
5 these service lines earlier in the year.

6 So let's look at the scope of the program  
7 today. Missouri-American claims in its testimony  
8 that it has already spent a million dollars in 2017  
9 and expects that it will spend a total of two,  
10 million dollars in calendar year 2017.

11 Staff testimony provides us more  
12 information. Staff testimony gives us invoices  
13 that show where this has occurred to date.

14 Specifically, Staff provides in  
15 Mr. Merciel's rebuttal testimony plumbing contract  
16 invoices that were provided by Missouri-American.

17 These invoices are for 11 customer-owned  
18 service line replacements in St. Joe, one in  
19 Jefferson City, two in Mexico, and 57 in Clayton.  
20 Seventy-one invoices, and 57 are in Clayton.

21 Now, one of my big criticisms has been  
22 that this program -- one of my big criticisms has  
23 been that this program is that Missouri-American  
24 simply asks for a blank check so it can replace the  
25 customer-owned service line and then seeks to

1 socialize the cost.

2 But Missouri-American never asked, Can the  
3 customer do this on their own? So later in my  
4 testimony, I propose that customers with homes that  
5 are worth more than a hundred thousand dollars  
6 should be expected to pay this cus -- this  
7 replacement of their customer service line on their  
8 own. Their houses are worth something. Let them  
9 replace it.

10 So using the invoices provided by Staff,  
11 let's look at some of the homes that were affected  
12 to date. I randomly looked at some of the invoices  
13 in Staff' rebuttal testimony.

14 Here's one of the 11 homes that saw a free  
15 service line replacement in St. Joseph. This home  
16 is worth over \$160,000. Yet Missouri-American  
17 simply gave this homeowner a \$5,000 service line  
18 replacement and wants its captive customers to pay  
19 these costs.

20 Here's a picture of the home. It's a  
21 beautiful home in St. Joseph. But the customer  
22 wasn't asked to fork over a single penny for this  
23 service line replacement. Rather,  
24 Missouri-American wants its captive customers to  
25 pay these costs.

1                   And just to show that I'm being  
2   completely transparent and objective, I didn't only  
3   show the nicest homes.

4                   Here is one of two homes in Mexico,  
5   Missouri. This home is worth just shy of \$45,000  
6   and was the beneficiary of a service line  
7   replacement.

8                   So as I said, given my recommendation this  
9   customer would have been -- would have had a  
10   service line available to it because that home is  
11   worth less than a hundred thousand dollars. And  
12   here's a picture of that house in Mexico.

13                  So let's move on to the homes in Clayton.  
14   As mentioned, of the 71 invoices contained in  
15   staff's rebuttal testimony, 57 were located in  
16   Clayton, Missouri.

17                  Let's look at the demographics of these  
18   Clayton homes. Here's a home on Carswold Drive.  
19   While this home is worth just shy of a half a  
20   million dollars, Missouri-American gave this  
21   customer a \$12,000 service line replacement and  
22   didn't ask the customer to fork over a penny.

23                  Here's a picture of that beautiful home in  
24   Clayton, Missouri. Another home in Clayton on  
25   Arundel Place was also the beneficiary. This home

1 is worth just shy of \$700,000, yet  
2 Missouri-American deemed this customer to be so  
3 destitute, apparently, that they gave this customer  
4 an \$8800 service line replacement and expects its  
5 other customers to pay for this.

6 Again, it is important to remember that  
7 these service lines are owned by the customer.  
8 Missouri-American expects its less affluent  
9 customers to pay for Missouri-American's suddenly  
10 generous nature. Here is a picture of that home in  
11 Clayton.

12 Another home in Clayton on Edgewood that  
13 was the unexpected beneficiary. This home is worth  
14 \$650,000 and was given a \$6,000 service line  
15 replacement. Picture of that home. Pretty  
16 impressive home.

17 And finally -- or another home on Arundel  
18 Place. This one is worth in excess of  
19 three-quarters of a million dollars.

20 And the owner was given an \$11,000 service  
21 line replacement and wasn't asked to pay a penny.  
22 Picture of that house.

23 Finally, another home in Clayton worth in  
24 excess of over \$700,000 was given an \$11,000  
25 service line replacement. And here's a picture of

1 that home in Clayton.

2 Again, 71 invoices in Staff's testimony.  
3 Fifty-seven of them in Clayton. These aren't  
4 people in inner city St. Louis. It can't be.

5 People in inner city St. Louis aren't  
6 serviced by Missouri-American. These are people in  
7 the County, by in large, customers that can afford  
8 to pay for these service line replacements on their  
9 own. They own the service line.

10 So let's move on. Let's look a little bit  
11 at Commission jurisdiction. Now I applaud Public  
12 Counsel. They went through the tariffs, and they  
13 cite in their position statement a number of  
14 tariffs that are implicated by this program. And I  
15 agree with Public Counsel.

16 I took a more -- a broader view. Let's  
17 look at the statutes. The Missouri Courts -- the  
18 Supreme Court has said that the -- the Public  
19 Service Commission is a creature of statute and  
20 necessarily must have express statutory authority  
21 for its actions.

22 So let's look at Section 386.025.58 or  
23 .025.59, which defines water system. A water  
24 system is defined as property, quote, owned,  
25 operated, controlled or managed by the utility.

1 That doesn't fit any of this. This is  
2 customer-owned service lines.

3 It's not owned, operated, controlled or  
4 managed by Missouri-American. It is owned,  
5 operated, controlled and managed by the customer.  
6 So there's certainly a question as to whether there  
7 is express statutory authority for the Commission  
8 to reach beyond this definition and allow  
9 rate-making for costs associated with the  
10 customers' property.

11 I ask you to think back a little bit, and  
12 I'm not going to go into depth about this. But  
13 think just in the last year, the -- the position  
14 that you took in KCP&L's electric vehicle charging  
15 station.

16 There the Commission refused to reach  
17 beyond the -- the utility's property and provide  
18 rate-making for costs. Here, Missouri-American  
19 wants you to do that exact thing, reach beyond  
20 their system, reach to customer-owned property and  
21 provide rate-making.

22 The two seem to be somewhat in conflict to  
23 me. And in addition to that obvious conflict,  
24 there are policy arguments that were implicated in  
25 the electric vehicle charging station that I think



1 you should think about when making this decision.

2           Regarding Commission jurisdiction, another  
3 relevant factor is the fact that Missouri-American  
4 attempted to get Legislation proposed and passed  
5 that would have fixed this problem.

6           The General Assembly never even took up  
7 that Legislation. It was referred to committee,  
8 but the Legislation was never even granted a  
9 hearing. The fact that the General Assembly did  
10 not deem this problem suitable for passing  
11 Legislation yet tells me something.

12           And, certainly, the fact that  
13 Missouri-American felt like it needed this  
14 Legislation tends to lead you to believe that there  
15 is not currently Commission jurisdiction. If there  
16 was, why would they need this Legislation?

17           Finally, I want to point out a couple  
18 things. Don't look at this problem simply in a  
19 vacuum. This is all part of the current 340  
20 Missouri-American rate case.

21           Here you see a chart where -- it's rather  
22 small, but a chart of the rate increases that are  
23 coming out of Missouri-American's rate increase.

24           If you go to the charge for St. Louis  
25 Metro, you see customers there in the rate case

1 that are looking at 40 to 50 percent rate  
2 increases.

3 This replacement of customer-owned lead  
4 service lines will certainly exacerbate those  
5 problems.

6 So what are my recommendations? First  
7 off, MECG agrees with Public Counsel that --  
8 utilize a pilot program, study this, look at scope  
9 of the problem, look at the cost, look at who  
10 should be picking up the costs. And look at the  
11 most cost effective means of addressing this  
12 problem.

13 By studying this, we can get  
14 Missouri-specific information that will be valuable  
15 to the General Assembly.

16 I'd also ask that you apply a means test.  
17 If -- there is always a limited amount of money out  
18 there. To the extent we're going to throw money at  
19 this, let's throw it at the people that can't  
20 afford to replace these service lines, these lead  
21 service lines on their own.

22 Certainly, that wouldn't involve  
23 three-quarter of a million dollar houses in  
24 Clayton. You know, the houses in Mexico,  
25 absolutely. But it shouldn't involve 57 homes in

1 Clayton.

2 So let's apply a means test. As I said,  
3 houses that are less than a hundred thousand  
4 dollars. Someone else suggested on a conference  
5 call, we could look at LIHEAP information to the --  
6 where a customer is relative to low income. You  
7 know, we can make it some percentage of that.

8 There are ways to tackle this. But,  
9 certainly, letting Missouri-American have a blank  
10 check to replace service lines in Clayton isn't  
11 answer.

12 We agree with Staff and Public Counsel  
13 that if you do defer any costs it should be at the  
14 utility's short-term debt cost.

15 Finally, we believe that costs should  
16 remain in the district in which they are incurred.  
17 We don't want to see a situation in which we  
18 replace service lines in Clayton and expect  
19 utilities -- or expect customers in Joplin to pick  
20 up those costs. So let's try to keep the costs in  
21 the district in which they are incurred.

22 And, finally, we ask that they are --  
23 remain in the class in which they are incurred. I  
24 don't know if there are industrial customers that  
25 have lead service lines. I would think they should

1 be responsible for paying those lead service lines.

2 But just as they should be responsible for  
3 their own costs, I don't believe industrial  
4 customers should pick up the cost of residential  
5 service line replacement. Thank you.

6 JUDGE PRIDGIN: Thank you. Bench  
7 questions? Mr. Chairman?

8 CHAIRMAN HALL: Just a few. You come  
9 right out and make the argument that this program  
10 is -- is part and parcel of a -- a design of the  
11 condition to enrich shareholders.

12 MR. WOODSMALL: Absolutely.

13 CHAIRMAN HALL: And I assume you don't  
14 take that kind of charge lightly, because that  
15 would be a -- a rather strong charge to make  
16 without a good amount of evidence and support for  
17 it.

18 MR. WOODSMALL: Sure. And -- and I think  
19 if this is where you're headed that the best  
20 example of that is Staff and Public Counsel both  
21 say that the deferred costs should be at short-term  
22 debit rate. The company wants their full rate of  
23 return on this. So it --

24 CHAIRMAN HALL: So let me ask you this.  
25 And I'll -- I'm taking your hundred --

1     \$180 million figure. I think the company has a  
2     somewhat different figure on that.

3             But let's -- but let's take your  
4     \$180 million figure. If the company were to use  
5     that 180 million dollars on projects that you  
6     believe are within -- if they spend \$180 million on  
7     -- on simply replacing a company-owned projects --

8             MR. WOODSMALL: Uh-huh.

9             CHAIRMAN HALL: -- what would -- what  
10    would the return be on that?

11            MR. WOODSMALL: The return would be the  
12    same as if -- as I seek on -- for the lead service  
13    line replacement.

14            CHAIRMAN HALL: Well, I guess my point is  
15    if the company was solely interested in profit,  
16    couldn't they take that \$180 million and use it on  
17    projects that are solely company-owned projects?

18            MR. WOODSMALL: They do.

19            CHAIRMAN HALL: And is it your position  
20    that they don't have a \$180 million worth of mains  
21    for replacement or -- or other company-owned --

22            MR. WOODSMALL: I don't know how much  
23    money they have. Certainly --

24            CHAIRMAN HALL: Well, it's not how much  
25    they have. But it's the back log of projects

1 available. I mean, isn't it -- isn't it -- isn't  
2 it very clear, clear that they could spend a  
3 \$180 million quite easily on company-owned  
4 infrastructure, and then we wouldn't even be here  
5 today?

6 MR. WOODSMALL: They seek to do both.

7 CHAIRMAN HALL: Right.

8 MR. WOODSMALL: They -- they seek to do  
9 both. So we're not seeing just the rate increase  
10 associated with replacing water treatment plant.  
11 The company wants to have the rate increase  
12 associated with the water treatment plant as well  
13 as the rate increase associated with replacing  
14 customer-owned service lines.

15 CHAIRMAN HALL: I guess my point is that  
16 if -- if they have X amount of money available to  
17 invest, and they could invest that in company-owned  
18 infrastructure or company-owned and customer-owned  
19 infrastructure, what difference -- why would they  
20 be motivated by profit to do customer and company  
21 if they could get the same return by putting all of  
22 that into company-owned.

23 And I think it's crystal clear that they  
24 have a back-log of projects available of a -- on  
25 company-owned infrastructure.

1           MR. WOODSMALL: So I -- I -- I can't agree  
2 with the concept that the company is doing this  
3 just out of the goodness of their heart.

4           CHAIRMAN HALL: Because that would just --  
5 why? Why?

6           MR. WOODSMALL: Because -- because if  
7 they're seeking -- if it was done out of the  
8 goodness of their heart, they wouldn't be seeking  
9 the inflated return that they're seeking. Both --  
10 and that's a question that needs to be asked.

11          CHAIRMAN HALL: Well, they're seeking the  
12 same return that they would receive if they were  
13 spending that money on company-owned  
14 infrastructure.

15          MR. WOODSMALL: You're assuming it's an if  
16 one, not the other. It's not an if one -- if you  
17 do the customer-owned service lines, you can't do  
18 water treatment plant.

19          The company wants to do both. They --  
20 they seek an opportunity for investment, which  
21 otherwise shouldn't be there because it's  
22 customer-owned property.

23          CHAIRMAN HALL: Okay. Well, we'll move  
24 on. I'm -- I'm intrigued with your statutory  
25 jurisdiction argument. Do you -- do you take the

1 position that all restoration on customer-owned  
2 property is -- is outside this Commission's  
3 jurisdiction? So --

4 MR. WOODSMALL: All restoration on  
5 customer-owned property?

6 CHAIRMAN HALL: Right. So if the company  
7 goes in working on -- on company-owned service  
8 lines and does damage to the customer's sidewalk,  
9 do you think that it would be inappropriate for --  
10 for the company to repair that sidewalk and include  
11 that as restoration work?

12 MR. WOODSMALL: I think that is incidental  
13 to the work they are doing on --

14 CHAIRMAN HALL: So is incidental the  
15 keyword there? Is that the standard?

16 MR. WOODSMALL: I don't know. When you  
17 talked about sidewalks, I started to hesitate  
18 because, frankly, I don't know who owns the  
19 sidewalk.

20 You know, so -- but let's make it a more  
21 clear example. If the customer's yard gets torn up  
22 and they have to lay some sod, that's clearer. I  
23 think it is purely incidental to the overall goal  
24 of working on the company-owned mains. This  
25 can be done by the customer. The company can still



1 do the replacement of their service lines without  
2 replacing the customer-owned service line. It's  
3 not necessary. Putting down --

4 CHAIRMAN HALL: Well, isn't there a great  
5 deal of research out there that the partial service  
6 line replacement is -- is -- is actually  
7 detrimental?

8 MR. WOODSMALL: Well, they're -- I can't  
9 speak for the research. There is some research,  
10 certainly, that is in the record.

11 But that same question then applies where  
12 does it stop? If -- if you feel like you need to  
13 replace the customer-owned service line because  
14 it's detrimental, then why do you stop there?  
15 Don't you have to replace the customer lead pipe  
16 and lead solder fittings in their house?

17 CHAIRMAN HALL: So are you modifying your  
18 position now to support the AAO including  
19 customer-owned plumbing?

20 MR. WOODSMALL: No. I'm saying that the  
21 Commission tariffs are very clear as to where it  
22 stops.

23 CHAIRMAN HALL: Okay. Let me switch gears  
24 again. Do you believe -- I'm going to ask you the  
25 same question I asked Staff Counsel.

1           Do you believe that the probability of  
2   recovery is a factor that we should take into  
3   account when determining whether or not to  
4   establish the AAO?

5           MR. WOODSMALL: I -- that's a tough  
6   question. I -- I don't know if the Commission  
7   should consider probability of recovery because, as  
8   you pointed out, you can't bind a future  
9   Commission.

10           I -- I think to the extent you should  
11   provide guidance. For instance -- and this is the  
12   point of my recommendation. Let's don't socialize  
13   the costs for homes that are worth more than a  
14   hundred thousand dollars.

15           We could leave that for the rate case.  
16   You know, we could get in a rate case and say it  
17   was imprudent to give away a service line  
18   replacement to a home that's worth a million  
19   dollars. But why not give that guidance to the  
20   company?

21           So I -- I think you can give guidance  
22   while you're here. So whether you call it the  
23   probability of recovery or simply providing  
24   guidance, I don't know. But you can't bind a  
25   future Commission as you pointed out.

1 CHAIRMAN HALL: Okay. Thank you.

2 MR. WOODSMALL: You're welcome.

3 JUDGE PRIDGIN: Commissioner Kenney?

4 COMMISSIONER KENNEY: Thank you. Good  
5 morning, Mr. Smallwood.

6 MR. WOODSMALL: Good morning.

7 COMMISSIONER KENNEY: You know, every year  
8 when I turn my business Quick Books over to my  
9 accountant, he says it's like continuing education  
10 all over again because it's such a mess. That's  
11 kind of what I get when I hear tons of attorneys  
12 just arguing back and forth because I have two  
13 children that are attorneys.

14 But I have a question. You have no  
15 problem with replacement of lines that are company  
16 -- on the company side of the meter, correct?

17 MR. WOODSMALL: No re -- no problem. as  
18 long as there are lines that need to be replaced, I  
19 think it should be done in an orderly fashion. You  
20 shouldn't replace a 100-year-old line when there's  
21 a 200-year-old line. No.

22 COMMISSIONER KENNEY: Lines that have lead  
23 in them.

24 MR. WOODSMALL: No.

25 COMMISSIONER KENNEY: You have no problem

1 with that?

2 MR. WOODSMALL: No.

3 COMMISSIONER KENNEY: And we can't make a  
4 customer do anything, right? If they don't want to  
5 replace their lines, they don't have to?

6 MR. WOODSMALL: No.

7 COMMISSIONER KENNEY: Do you think the  
8 company has a liability if they know that their  
9 recent studies show that once they disturb a line  
10 it's going to cause lead to leech in the system? I  
11 mean, that's what recent studies show?

12 MR. WOODSMALL: Well, and I think Public  
13 Counsel addresses that in their testimony about the  
14 company giving notice to the customers. That --

15 COMMISSIONER KENNEY: That if they  
16 disturbed a line, it could cause lead to leech into  
17 their system?

18 MR. WOODSMALL: And the -- the extent of  
19 the problem is unknown. You have a lead service  
20 line already. You may have lead in your house.  
21 Filters are available. That kind of education, I  
22 think, is legitimate.

23 Part of my problem is the slippery slope  
24 that we're getting on. This is for the water  
25 company. But imagine a situation where based upon

1 the decision here the gas company says, Okay, we  
2 want to start replacing furnaces and hot water  
3 heaters. Where is that going to stop? Electric  
4 utility companies --

5 COMMISSIONER KENNEY: Let's not go down  
6 that road. But I -- I understand your concern. I  
7 -- I do.

8 But I don't think a means test has  
9 anything to do with it because just because someone  
10 doesn't have -- we do one -- we -- we take one  
11 segment of society, and we are going make sure  
12 that, Okay, you're not going to have any lead in  
13 your water, but we don't do it on this side because  
14 you may have more money. I mean, I -- but overall,  
15 I can understand your -- your --

16 MR. WOODSMALL: Well, if -- if that is the  
17 policy direction you want to go, I understand that,  
18 then let's move this. The company wants to replace  
19 the customer-owned service line, charge everybody  
20 else and then give it back to the customer.

21 If we're going to say we're not going to  
22 apply a means test, let's make this part of  
23 company's property. You know, if the company is  
24 going to replace it and there's not going to be any  
25 means test, let's have them do it for everybody.

1 They don't want do that.

2 COMMISSIONER KENNEY: But if they did do  
3 it for everyone, you'd be okay with that?

4 MR. WOODSMALL: No. I don't think that  
5 that -- typically, the Commission has always tried  
6 to look at -- and this is where I draw the analogy  
7 to the electric vehicle charging station.

8 Let's look at what is the necessary scope  
9 of the monopoly? And, certainly, the service mains  
10 running down the street are a necessary part of the  
11 monopoly.

12 The line in your yard coming into the  
13 house isn't a necessary part of the monopoly. You  
14 could have any plumbers do that. And maybe they  
15 should.

16 You said on the electric vehicle charging  
17 station it's not a necessary part of the monopoly.  
18 So why extend the utility's monopoly to this  
19 segment?

20 COMMISSIONER KENNEY: Thank you.

21 JUDGE PRIDGIN: Further Bench questions?  
22 Commissioner Rupp?

23 COMMISSIONER RUPP: I thoroughly was  
24 expecting to see a picture of my house on your  
25 slides.

1 MR. WOODSMALL: Do you live in Clayton?

2 COMMISSIONER RUPP: I'm not -- I'm in  
3 Missouri-American Water. I just --

4 MR. WOODSMALL: I don't know your address  
5 either, so you're safe.

6 JUDGE PRIDGIN: Any other Bench questions?  
7 Anything?

8 COMMISSIONER STOLL: No.

9 JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
10 I believe MIEC has waived opening. Consumers  
11 Counsel, Mr. Coffman?

12 MR. COFFMAN: Yes. I'll be brief, if I  
13 can just sit here. The --

14 JUDGE PRIDGIN: Certainly.

15 OPENING STATEMENT

16 BY MR. COFFMAN:

17 MR. COFFMAN: Consumers Council of  
18 Missouri shares the jurisdictional concerns that  
19 you heard from Mr. Woodsmall.

20 We think that it is a slippery slope to be  
21 providing the opportunity to earn on property  
22 that's not owned or controlled by the utility, it's  
23 not essential for providing safe and adequate  
24 service to the system.

25 We think this is a -- a very serious

1 problem. We're not convinced that this particular  
2 solution is really getting at the majority of the  
3 problem or it's really the right way to go about  
4 it. But we certainly support the Office of Public  
5 Counsel's pilot program. We think that could give  
6 us more insight. Thank you.

7 JUDGE PRIDGIN: Mr. Coffman, thank you.  
8 Bench questions?

9 CHAIRMAN HALL: No questions. Thank you.

10 COMMISSIONER STOLL: No questions.

11 COMMISSIONER RUPP: No questions.

12 JUDGE PRIDGIN: Public Counsel?

13 MR. OPITZ: Thank you, Judge.

14 JUDGE PRIDGIN: Mr. Opitz, when you're  
15 ready, sir.

16 COMMISSIONER COLEMAN: Thank you.

17 COMMISSIONER STOLL: Thank you.

18 COMMISSIONER RUPP: Thank you.

19 COMMISSIONER KENNEY: Thank you.

20 CHAIRMAN HALL: Thanks.

21 OPENING STATEMENT

22 BY MR. OPITZ:

23 MR. OPITZ: May it please the Commission.  
24 Before I get into my prepared remarks, I want to  
25 respond to some statements by the Staff.



1 Frankly, from what I heard, it's pretty  
2 clear that the Staff either did not read or does  
3 not understand Public Counsel's proposal.

4 We're not saying to cease this program of  
5 replacement right now until the pilot is approved.  
6 We're trying to say, Look, this pilot is designed  
7 to permit you to continue doing that.

8 I heard reference to punitive facts that  
9 -- that I've -- I've scoured the record and I don't  
10 know where those facts are in the record.

11 And I think it's irresponsible and  
12 dangerous to be fomenting here in that way in a  
13 public forum.

14 Public Counsel has proposed a pilot  
15 program because the company's proposal is flawed  
16 from a legal perspective, from a policy perspective  
17 and from an accounting perspective.

18 Other than those three issues, the only  
19 questions remaining are, I guess, who, what, when,  
20 where, why, how and who pays?

21 Boil down to it here, what the company is  
22 asking the Commission to do, and understand it's  
23 been modified this morning by the company's Counsel  
24 is approve cost recovery of expenses it has  
25 incurred violating its tariff.

1           The company began replacing customer-owned  
2   service lines in January of 2017. Importantly, it  
3   began doing so without making any demonstration  
4   whether it's program was legal, without  
5   demonstrating the program was necessary and without  
6   providing any cost benefit study and without  
7   consideration of any effects on public disclosure.

8           The company chose to skip over all of  
9   that. And, instead, they have focused entirely on  
10  cost recovery. They see a pipe. They replace a  
11  bit more of the pipe. Think raise rates. That's  
12  their program.

13          As I alluded to, a skeptical mind might  
14  question whether the motivation behind this project  
15  endeavored in such a manner is really about safety  
16  or its about some people in New Jersey coming up  
17  with a plan to turn an unrelated crisis in Michigan  
18  into a profit opportunity, the return of and return  
19  on \$180 million or more.

20          That \$180 million isn't the company's high  
21  end. That's the company's estimate of 30,000 pipes  
22  in their service territory times the company's  
23  revised estimate of \$6,000 per pipe on average. So  
24  that is the company's estimate  
25  \$180 million.

1           If we take the revised figures of -- of  
2   the company's 6,000 per pipe and apply it to what  
3   Public Counsel believes there are available in  
4   Missouri, we're approaching two billion dollars.

5           You know, as -- as I will explain a little  
6   bit more in detail, and it may be modified by -- by  
7   the company's position that they made in opening --  
8   but the company is really in anywhere -- in their  
9   application, in their position statement and in  
10  their prefiled testimony, they seem to be asking  
11  for rate recovery.

12           It asks for a promise -- it ask for a  
13  promise of rate recovery implicitly when they ask  
14  for an order granting a regulatory asset.

15           And it asks for regulatory explicitly when  
16  it asks for specific treatment and language stating  
17  that the regulatory asset will remain in place  
18  until all eligible costs are amortized and  
19  recovered in rates. That is asking for rate of  
20  recovery.

21           Now I understand the company has since had  
22  the good sense to drop that. But it still remains  
23  in their application, it remains in their pre-filed  
24  system and it remains in their Petition.

25           These decisions that the company is asking

1 you to make are decisions you can't make outside of  
2 a rate case.

3 But before discussing the accounting  
4 issue, this Commission must examine the legality of  
5 what the company is doing and what it proposes to  
6 continue doing.

7 Make no mistake. This isn't about just  
8 this stub period that they're trying to tell you,  
9 Well, it's only for the period of the rate case.  
10 If they get what they want, they intend to continue  
11 doing this.

12 Which brings me to the first issue for the  
13 Commission to determine -- to determine. Does  
14 Missouri-American's tariff permit the company to  
15 replace customer-owned service lines?

16 Put simply, no. The company's tariff very  
17 clearly explains that the kind of work being done  
18 here by Missouri-American is the responsibility of  
19 the customers.

20 Whether it is installation, construction,  
21 maintenance or replacement, if it's on that  
22 customer-owned pipe, the pipe, the responsibility  
23 does not change.

24 Yes, they maybe required to replace  
25 sidewalk or yard in the normal course, but their

1 tariffs talk about pipe.

2 The company's position statement that the  
3 tariff language neither requires Missouri-American  
4 to nor prohibits Missouri-American for replacing a  
5 customer service line is nonsense. Of course it  
6 does. The tariff language is there in black and  
7 white.

8 Maybe the Commission may be able to permit  
9 the company to do it. That's going to be part and  
10 parcel of our proposed pilot program.

11 But the company cannot decide to hoist  
12 those costs onto all customers. That's what those  
13 tariffs are designs to prohibit.

14 Astonishingly, the Staff's position on  
15 this point is that it has no formal position. It  
16 suggests that one paragraph is all that's needed to  
17 cure the legal deficiency.

18 Well, what language are they proposing?  
19 What's this one paragraph? There is no proposal by  
20 the company or the Staff to accomplish this goal.  
21 As you've heard, the company doesn't even believe  
22 that it is a problem.

23 Second, this problem is broader than a  
24 single paragraph. In addition to replacing  
25 customer-owned property, the company is entering

1 unauthorized contracts and unlawfully assuming  
2 additional liability.

3 When the company assumes liability, that  
4 liability gets born by all other ratepayers. In my  
5 slide show, I've listed the relevant -- what I  
6 believe to be the relevant portions of the tariff.  
7 I've listed the company's actions, and I've  
8 asserted that I believe there to be a violation.

9 Aside from the very clear tariff  
10 violations, there is a broader question here of  
11 jurisdiction. And MECG alluded to it. Can the  
12 question -- can the Commission require replacement  
13 of customer-owned property?

14 You've seen this in nearly every case.  
15 It's a UCCM quote explaining that the Commission is  
16 a creature of statute and your authority is limited  
17 by what the statutes say.

18 The company's proposed draft in the recent  
19 Legislative session demonstrates that even the  
20 company harbors some doubt that what it's doing  
21 might not be legal.

22 This is an e-mail I've included from the  
23 company to various parties this past April.  
24 As far back as April 17th, the company and  
25 Commission were discussing enabling language for

1 lead service line replacement.

2 As you can see, their enabling legislation  
3 would have required an additional step of a  
4 rule-making proceeding before the company could  
5 endeavor on there. Neither one of those has  
6 occurred.

7 The company's plan and current actions are  
8 unlawful because they violate the company's tariff.  
9 And, furthermore, even if the tariff were  
10 different, even if some modification were made,  
11 there is a question about the Commission's  
12 authority to authorize such a principle.

13 Public Counsel is not simply saying no.  
14 Public Counsel has proposed that the company should  
15 withdraw its AAO request and instead seek to  
16 implement a pilot in the context of its rate case.

17 We have even outlined what the pilot  
18 should look like, what issue should be considered,  
19 and we've done so in a way that gives the company  
20 greater certainty of cost recovery.

21 Understand, you can do rate-making  
22 treatment in a rate case. You can't do that in an  
23 AAO.

24 For the past several months, Public  
25 Counsel has worked to develop a legal basis to

1 continue the program, an evidentiary basis to  
2 continue the program, a policy basis to continue  
3 the program.

4 And we've also tried to develop  
5 appropriate accounting treatment for the program.  
6 But every step of the way, the company has  
7 steadfastly brushed us aside. Only OPC's proposal  
8 offers the Commission a legal, evidentiary and  
9 policy basis to authorize Missouri-American to  
10 continue examining lead service line replacement.

11 Moving to the second decision point.  
12 Has Missouri-American demonstrated the necessity of  
13 replacing customer-owned service lines? Look,  
14 whether the project is necessary itself is one of  
15 the many policy issues the company has failed to  
16 address.

17 We hear lots of vague references to, All  
18 of the studies say this. Well, we haven't seen  
19 those studies. And the studies we've seen, as  
20 Dr. Marke will be able to tell you -- will be able  
21 to tell are you far from conclusive.

22 Demonstrating the necessity of this  
23 project is a burden the company has failed to meet.  
24 The company has offered no testimony demonstrating  
25 the necessity of customer-owned lead service lines.



1           In fact, it would be hard for them to do  
2   so because Missouri-American is presently in  
3   compliance with the lead and copper rule.

4           Importantly, the company, in its  
5   application, in its testimony, and in its position  
6   statements, are not telling you that replacing  
7   customer-owned service lines is necessary because  
8   of any immediate threat to public health.

9           Instead, in its position statement, the  
10   company argues that full removal is necessary  
11   because of, quote, the risk of potential exposure  
12   to lead associated with partial replacement, end  
13   quote.

14           The company's testimony similarly offers  
15   that the project will reduce, quote, potential  
16   exposure to lead and drinking water, end quote.

17           I want to make very clear that this is a  
18   temporary potential exposure to lead in drinking  
19   water and it exists whether the company performs a  
20   full or partial replacement.

21           Furthermore, the term full lead service  
22   line replacement is a misnomer. In fact, in some  
23   cases, the company is simply removing more lead  
24   than they were before to just outside the  
25   customer's home leaving a portion of the lead pipe

1 in place. Full does not always mean full.

2 So why is Missouri-American spending  
3 upwards of \$10,000 per house in some cases when the  
4 potential exposure exists regardless?

5 That's an outstanding question. The  
6 company vaguely references its projects in New  
7 Jersey and Illinois as being supportive of this  
8 plan.

9 But when I asked the company for those  
10 reports from those states, they say that none  
11 exist. Our pilot would provide an opportunity to a  
12 report to be produced.

13 Public Counsel wants to know if what the  
14 company is doing at great cost is actually better  
15 than the alternative. At this point, it's  
16 uncertain.

17 And even though it is incumbent on  
18 Missouri-American to actually demonstrate this,  
19 Public Counsel has proposed the framework for a  
20 pilot study to explore that very issue.

21 What is the objective of this project?

22 First, to me, its not clear what  
23 Missouri-American's objective is.

24 However, if the objective is to reduce  
25 overall lead exposure, its program might make

1 things worse.

2 First, as mentioned, the potential  
3 increase to lead levels in water through disturbing  
4 the lines exist even if the full service line is  
5 replaced.

6 This graph -- this is a graph in -- I  
7 guess it's an illustration in Dr. Marke's testimony  
8 showing the various potential sources of lead in a  
9 home.

10 Even the act of removing the line from the  
11 ground out in the yard -- removing the line in the  
12 ground from the yard while not in the water supply  
13 increase potential lead exposure.

14 Excavation or extraction of lead-based  
15 products requires additional remedial precautions  
16 for workers on the site and in the lead disposal to  
17 ensure that there is no lead left over in the soil,  
18 for example.

19 How does Missouri-American's proposal  
20 ensure its customers don't face increased lead  
21 exposure in other areas due to their contractor's  
22 excavation process?

23 We don't know. A second way that  
24 Missouri-American's proposal may make things work  
25 is that it may give customers a false sense of

1 security about their lead exposure.

2 Removing lead service lines is a very  
3 expensive proposition. And it does not even  
4 necessarily equate to lower lead levels.

5 In his testimony, Dr. Marke describes the  
6 experience that the City of Madison, Wisconsin, had  
7 replacing its lead service lines. The City spent  
8 decades replacing all of the lead service lines.

9 Once they were replaced, four years after  
10 all of that was taken out, high lead levels were  
11 still found in a number of the water samples.

12 Removing just the service line is not some  
13 panacea that will cure all water lead exposure. We  
14 need to understand Missouri-American's objective,  
15 and we need to have an open and honest dialogue  
16 about how to accomplish that objective.

17 Public Counsel's pilot proposal would  
18 facilitate that discussion. It comes up here, and  
19 you've heard it this morning, references to public  
20 health benefits.

21 Evaluation of the necessity of replacing  
22 these lines closely relates to the policy question  
23 about the impact, if any, on public health from the  
24 condition's proposed program.

25 Without alleging any Missouri-specific

1 facts, I suppose DED's witness references a census  
2 some census data. The company and other parties  
3 vaguely reference Flint as the main reason that  
4 this program should go forward.

5 Only Public Counsel made any attempt to  
6 examine and provide the Commission information on  
7 Flint. Dr. Marke's testimony contains a tremendous  
8 amount of information on that.

9 So what do we know about Flint? The  
10 first thing to know is that the water crisis in  
11 Flint occurred at a time when the City decided to  
12 cease purchasing water from the City of Detroit and  
13 instead pumped un or untreated water through its  
14 system.

15 The second thing to know is that Flint --  
16 whenever somebody mentions Flint, the conversation  
17 immediately turns to lead.

18 Dr. Marke put in significant time and  
19 effort to research the available information about  
20 the impact on lead levels resulting from the Flint  
21 water crisis.

22 That is presented more fully in his  
23 pre-filed system. And I encourage you to ask him  
24 about that today.

25 However, I want to point out a few pieces

1 of information he presents. First, Dr. Marke  
2 provides an overview of the trend and the blood  
3 lead levels over the past several decades. As you  
4 can see, blood lead levels have gone down.

5 Moving to a Flint-specific chart, the  
6 percentage children with elevated blood lead levels  
7 has declined significantly since the early 2000s.

8 Based on the news coverage Flint, prior to  
9 digging into this case and working with Dr. Marke  
10 on -- on researching this issue, I would have  
11 expected the blood lead levels in Flint to have  
12 been at all time highs during their water crisis.

13 But this charge shows that that was not  
14 the case. There is a modest increase in the  
15 percentage of children with elevated blood lead  
16 levels. But the impact is about the same levels as  
17 they were in 2012.

18 This next slide is a -- is a chart showing  
19 numerically the incidence of elevated blood levels  
20 before Flint began using the water from the Flint  
21 River, during the time the Flint River was a source  
22 of water both early on and later on, and, again,  
23 after the water was once again purchased from  
24 Detroit.

25 Again, there is some increase, but not the

1 precipitous spike one would have expected based on  
2 the news reports or statements by other parties of  
3 this case.

4 Here is a slide showing the incidence of  
5 elevated blood levels during three overlapping  
6 periods at the height of the water crisis when  
7 Flint was pumping un- or under-treated water from  
8 the Flint River.

9 At all points during that time, the  
10 percentage of children with elevated blood lead  
11 levels in Flint was lower than the State average of  
12 Michigan.

13 So what is the take-away? Even under the  
14 worst case scenario or for a period of several  
15 months, they pushed un- or under-treated water  
16 through the distribution system.

17 The public health impact as it relates to  
18 blood lead levels is uncertain. In addition to  
19 examining the blood lead level data in Flint, Dr.  
20 Marke also examined the available information on  
21 water lead levels.

22 His testimony explains that the impact on  
23 water lead levels, especially assigning causation  
24 of that water lead level to service lines is  
25 similarly uncertain.

1           If the Commission is going to authorize a  
2   program to replace customer-owned lead service  
3   lines as a reaction to a perceives public health  
4   threat, it should base its decision on competent  
5   and substantial evidence, not vague references to a  
6   crisis, not a vague reference to holding a pipe  
7   wearing gloves.

8           The pilot program proposed by Public  
9   Counsel is intended to give the Commission and the  
10   Legislature and the Governor that additional  
11   information to make the right decision.

12           Another policy issue in  
13   Missouri-American's proposal that's been failed to  
14   address is the prioritization of replacement. The  
15   company, Staff and DED all reference the social  
16   concern that some customers will be unable to pay  
17   to replace their own lead service lines, and so the  
18   company must socialize these costs to all  
19   customers.

20           However, the facts do not support that  
21   hypothesis? You saw the slides presented by -- by  
22   Mr. Woodsmall. Here is an additional slide in  
23   Dr. Marke's testimony showing where the company has  
24   replaced lead service lines.

25           His analysis shows that most replacement



1 -- replacements so far have occurred in an area  
2 with an average home value four times the state  
3 median.

4 Missouri-American does not have a plan to  
5 prioritize people who are unable to pay to replace  
6 their own service lines. In fact, the opposite  
7 appears to be occurring.

8 Another unanswered policy question is  
9 customer disclosure. The company has no plan to  
10 expose the presence of lead service lines to  
11 customers until they are offering to replace the  
12 line as part of a program.

13 When a customer declines to have the lead  
14 service line replaced, which has occurred, the  
15 company has no plan to notify future customers at  
16 that address.

17 A related policy consideration is the  
18 potential impact of disclosure on property values.  
19 For homes that Missouri-American identifies to have  
20 a lead service line but does not plan to get to for  
21 ten years, what happens?

22 In Flint, all of the homes were de-valued.  
23 Counsel for DED referenced, and I believe he was  
24 referencing the testimony of Dr. Marke, Federal  
25 loan agencies wouldn't insure loans there.

1           What happens if property values plummet  
2   because Missouri-American and the Staff have  
3   fomented fear without showing the necessity of a  
4   public benefit?

5           The relationship between the benefits  
6   resulting from replacing customer-owned lead  
7   service lines and the cost of replacing  
8   customer-owned lead service lines is another  
9   important policy for the consideration of the  
10   Commission.

11           So what is the cost of Missouri-American's  
12   proposed program to replace customer-owned service  
13   lines? I don't know. Dr. Marke doesn't know.  
14   Public Counsel witness Mr. Hyman doesn't know.

15           Importantly, Missouri-American does not  
16   know either. Instead, the company asks for a blank  
17   check without demonstrating necessity of the  
18   project or developing any kind of cost benefit  
19   study.

20           This is a chart in Dr. Marke's testimony  
21   that gives an overview of the tremendous potential  
22   cost for replacing lead service lines.

23           Public Counsel has challenged the  
24   company's estimates of these -- the number of lines  
25   and the cost of replacing the line.

1           In their surrebuttal testimony,  
2   Missouri-American witnesses Naumick and Aiton admit  
3   that the company's estimate of lead service lines  
4   it not perfect.

5           Mr. Aiton also addresses the inaccuracy of  
6   the company's initial cost estimate, now stating  
7   that the company expects the average costs across  
8   all replacements to be \$6,000.

9           With the company's new estimate of \$6,000,  
10   assuming that their lead -- number of lead service  
11   line replacement is accurate, that cost increases  
12   and this is the company's estimate and the  
13   company's cost average to \$180 million.

14           This is not a trivial amount of money to  
15   customers to bear, especially considering that  
16   Missouri-American is currently seeking to increase  
17   rates by its customers the St. Louis through its  
18   ongoing rates case.

19           Rather than a program that is a simplistic  
20   see pipe, replace a bit more of the pipe, raise  
21   rates, the company should be exploring all  
22   available options.

23           Public Counsel's proposed pilot program  
24   offers an opportunity to do so while continuing to  
25   replace the lead service lines until the study is

1 concluded.

2 For example, if the argument is that a  
3 partial lead service line replacement potentially  
4 leaves -- potentially leaves some elevated lead  
5 level in the water in the short-term, would a point  
6 of use lead-free water filter represent a  
7 reasonable alternative? Lead-free water filters  
8 have been historically utilized by the EPA as super  
9 fun sites in Missouri's old lead district.

10 Today, lead-free water filters -- and  
11 these are being used in Flint -- costs  
12 approximately \$50. \$10,000. \$50. If water  
13 filters are appropriate in Federally designated  
14 super fund sites, certainly, it should be an option  
15 considered to address the mere potential for  
16 temporarily increased water lead levels.

17 And as I mentioned, there is a potential  
18 for elevated water lead levels when they do the  
19 full replacement.

20 Through Public Counsel's proposed pilot  
21 and collaborative study, the company would have an  
22 opportunity to identify alternative solutions that  
23 could produce superior public health benefits at a  
24 fraction of the cost.

25 So the question that the company wants you

1 to answer is should the Commission grant  
2 Missouri-American the accounting authority order it  
3 has requested in this indication? No.

4 First, the company's proposal does not  
5 address the fundamental question of its legal  
6 ability to replace these customer-owned service  
7 lines.

8 Second, as a matter of policy, the  
9 company's plan -- proposed plan focuses on the  
10 overly simplistic engineering aspect of replacing  
11 customer lines without demonstrating any cost  
12 benefit analysis, without addressing any of the  
13 feasibility or policy considerations raised in the  
14 testimony of Dr. Marke.

15 Third, to the extent that  
16 Missouri-American is seeking an ordinary  
17 determining the probability of rate recovery, the  
18 Commission can only make rate determinations in a  
19 rate case, and so it cannot grant the AAO with the  
20 language requested by the company in its position  
21 statement, in its application and in its prefiled  
22 testimony.

23 Now, I understand that may have been  
24 changed this morning as a result of -- of their  
25 Counsel's opening statement.

1           Furthermore, Missouri-American's business  
2   model is to treat water. It's to replace pipes.  
3   These lead pipes have been in the ground for years.  
4   Their existence is a surprise to no one, which is  
5   why the industry takes steps to treat their water  
6   and why Federal and State agencies have promulgated  
7   standards and are overseeing their activities,  
8   standards which Missouri-American Water is  
9   currently in compliance with. Treating their water  
10  and replacing lines is literally in the ordinary  
11  course of their business.

12           When utilities ask for accounting  
13  authority orders, they often talk in terms of  
14  creating a regulatory asset as a means to deferred  
15  cost from one period into another period. In fact,  
16  that is what the company has asked the Commission  
17  to do here.

18           In its position statement, in its  
19  application and in the testimony of Mr. LaGrand,  
20  the company asked for a regulatory asset.

21           However, I understand the company has said  
22  that they're no longer requesting that  
23  determination. And that's evident, also, in their  
24  position statement where the company, despite  
25  having said they were asking for it in Issue 1, in

1 Issue 7 says, The Commission need not make a  
2 regulatory asset determination.

3 The Commission should not be making a  
4 determination on whether a utility can book an item  
5 as a regulatory asset outside of a rate case. This  
6 is because, according to the generally accepted  
7 accounting practices or GAAP, the defining feature  
8 of a regulatory asset is a determine by the utility  
9 management -- determination by the utility  
10 management that those costs are probable of  
11 recovery in a rate case.

12 Outside of a rate case, this is a decision  
13 that only utility management can make.  
14 Importantly, when it comes to water who are  
15 obligated to follow for Commission purposes the  
16 NARUC USOA.

17 The closest account to a regulatory asset  
18 is Account 186. Account 186 is merely a deferred  
19 debit account. Costs recorded to a deferred debit  
20 account have no association with rate recovery  
21 because -- and I believe this is the dedication of  
22 that account -- the proper final disposition of the  
23 account is uncertain and, therefore, it's not a  
24 regulatory's asset.

25 Notably, as Public Counsel Witness Hyneman

1 explains in his surrebuttal  
2 testimony, Missouri-American does not need  
3 Commission approval to record expenses into Account  
4 186, Miscellaneous Deferred Debits.

5 This fact supports the inference that  
6 Missouri-American is asking for an implicit promise  
7 of future rate recovery. As I mentioned earlier,  
8 the company is not really asking for an implicit  
9 promise of rate recovery but had also previously,  
10 in its application, in its position statement and  
11 in its pre-filed testimony, but it's now withdrawn,  
12 they had explicitly asked for rate recovery. This  
13 is relief that the Commission cannot grant.

14 The relevant decision point on this issue  
15 is Issue 7. If the Commission grants an AAO, does  
16 it classify it any deferred costs as a deferred  
17 debit, or does it classify any deferred cost as a  
18 regulatory asset?

19 For the reasons I just mentioned and those  
20 explained in more detail in the testimony of  
21 Mr. Hyneman, and, again, I encourage you to ask him  
22 about any accounting related questions.

23 If the Commission grants an AAO, it should  
24 only permit the company to classify the deferred  
25 costs as a deferred debit to be in NARUC account



1 USA Account 186.

2 The Commission staff offers a strange  
3 position on this question stating that, quote, Any  
4 costs deferred to the utility's balance sheet upon  
5 order of the Commission should be considered a  
6 regulatory asset for regulatory accounting purposes  
7 regardless of how such a term may be defined under  
8 generally accepted account principles, end quote.

9 Staff's position makes very little sense.  
10 Account 186 is not a regulatory asset. It is a  
11 deferred debit.

12 Second, this is an accounting case  
13 occurring outside of a rate case. The company must  
14 follow GAAP for accounting purposes. Otherwise,  
15 they run the risk of getting bad opinions from  
16 outside auditors, face potential Sarbanes-Oxly  
17 issues and face potential SEC violations. The  
18 company must follow GAAP.

19 Now, in a rate case, the Commission can  
20 tell them to book things in different ways, can  
21 call things regulatory assets, but it can't do that  
22 here and it shouldn't do that here.

23 In this accounting case, only the company  
24 management can determine if an expense item should  
25 be recorded as a regulatory asset.

1           If the Commission grants an AAO, what  
2     carrying costs should utilized? The monthly  
3     carrying costs to be charged to Account 186, if the  
4     Commission decides to issue that order, could be at  
5     the American Water Works Company's current  
6     short-term debt rate.

7           The short-term debt interest rate is the  
8     first cost applied to utility construction  
9     projects. This is a practice required by the  
10    regulatory body such as the FERC and has been  
11    required by this Commission in the allowance for  
12    funds used during construction formula.

13          On this point, Public Counsel's  
14    recommendation to use short-term debt rate is  
15    consistent with the Staff's recommendation.

16          IF the Commission grants an AAO, what is  
17    the starting date of the amortization of the  
18    deferred account? Again, if the Commission decides  
19    to grant an AAO, it should require  
20    Missouri-American to begin amortization  
21    immediately.

22          The matching principle matches the  
23    occurrence of the cost to the benefit received from  
24    the -- resulting from the occurrence of those  
25    costs, not the specific month of rate recovery.

1           To delay amortization as proposed by  
2   Missouri-American of the expense deferral to a date  
3   significantly later than the date when the benefit  
4   of the expense is received, that would be the true  
5   deviation from the matching principle and should be  
6   rejected.

7           So what do I propose? Public Counsel  
8   recommends that the Commission reject the company's  
9   current April application, and if the company seeks  
10   relief within the pending rate case, consider  
11   Public Counsel's alternative for a two-year pilot  
12   study in which know no than 4 million annually or  
13   8 million in total can be spent on planned full  
14   lead service line replacement and the third party  
15   administrative costs associated with the  
16   collaborative research efforts.

17           We've put those numbers, and I have  
18   conveyed to the parties that that is an area where  
19   we're willing to work with them if they apply for  
20   that in the rate case. But they have to  
21   demonstrate what it is that they need to spend to  
22   continue doing replacement during the pilot.

23           Right now, we know they're at about  
24   2 million for the year. So what we did, knowing  
25   that they said that they're going to ramp up their

1 replacement, we said, Let's double it to allow them  
2 wiggle room.

3 The company's estimates on how much  
4 they're going to replace when I asked them about  
5 that, and I believe it's in the testimony, the  
6 pre-filed testimony of the company, is that, We  
7 estimate 30,000, we want to do it over ten years,  
8 so we're going to do 3,000 a year.

9 That doesn't cut it for me. They need to  
10 show how they're going to spend that money, how  
11 many lines are going to replace, they need to take  
12 into account working days, rain days. We're not  
13 going to agree to a blank check. If I agreed to a  
14 blank check, I should be fired.

15 Our pilot study is designed to explore the  
16 feasibility, legality and associated policy  
17 implications of full lead service line replacement.

18 We want it to culminate a report that  
19 Commission will be able to examine and perhaps if  
20 the results show one way, you might see another  
21 application for something. You might see other  
22 utilities do it, not just Missouri-American.

23 The pilot is described in the testimony of  
24 Dr. Marke and would involve as -- as Counsel for  
25 the company explained, five policy tracks and

1 culminate in a final report.

2 This includes an advisory committee that  
3 would hire or come up with the ideas and the  
4 policies that the company report is going to  
5 explore.

6 The second component would be a scoping  
7 analysis to examine and come up with the best  
8 estimates of the location of these pipes and the  
9 number of these pipes.

10 The third component is the testing and  
11 planned service line replacement itself. The  
12 fourth component relates to the communications,  
13 disclosure, prioritization and implementation of  
14 very important policy consideration.

15 And the last component is the  
16 consideration of ancillary issues. This is where  
17 the group working together would consider aspects  
18 such as, you know, showing the potential job  
19 creations associated with a project like this.  
20 Maybe that's a benefit to it.

21 Exploring outside sources of funding to  
22 the project. Dr. Marke's testimony talks about how  
23 maybe if the study shows that there's benefit to  
24 this and we've developed a plan to do it to go  
25 forward, this would be perfect for a shuttle ready

1 -- shovel infrastructure project.

2 If the Commission wants to enable  
3 Missouri-American to continue replacing  
4 customer-owned lead service lines, only Public  
5 Counsel provides a legal basis to do so. Only  
6 Public Counsel provides the Commission with the  
7 relevant facts and evidentiary basis for a  
8 decision.

9 Only Public Counsel has made an attempt to  
10 critically examine the multiple policy issues  
11 presented by the company's plans.

12 Importantly, Public Counsel's proposed  
13 pilot program presents a path forward to address  
14 all of those issues, including the necessity and  
15 the efficacy of full lead service line replacement  
16 while permitting the company to continue replacing  
17 lead service lines as the pilot is conducted.

18 If have you any questions about the  
19 accounting treatment, Public Counsel Witness  
20 Charles Heinemann will testify later.

21 And I encourage you to ask him about the  
22 demerits of the company's AAO request as well as  
23 the specific treatment that Public Counsel proposes  
24 associated within a pilot program, treatment that  
25 is fair to the utility and, in some cases, a

1 benefit. And it's certainly a benefit  
2 because it would be more certainty of rate  
3 recovery. Public Counsel will also have Dr. Marke  
4 appear. He has put in a tremendous amount of work  
5 into the policy issues. And having identified many  
6 deficiencies in the company's program, he has gone  
7 out of his way to develop an outline for how to  
8 proceed with the pilot proposal.

9 You know, there is a lot of material in  
10 his testimony, and it is weighty stuff. If you're  
11 unsure about anything, please ask him. If you see  
12 a graph and you don't know what that graph is  
13 demonstrating, please ask him.

14 You know, I -- I will tell you this to  
15 show the extent of work that Dr. Marke has put into  
16 this. Missouri-American's witness Naumick in his  
17 direct testimony references that a range of  
18 national experts support his position.

19 So I asked the company to identify those  
20 experts. They said, Well, Gary Naumick works with  
21 a range of experts. I said, Well, that's not good  
22 enough. You can't just tell me he works with  
23 experts. Tell me those experts.

24 The response, they included a few  
25 witnesses' names in their supplement, which

1 included somebody's name. And then inside a  
2 parenthetical, it said, A student of Mark Edwards.

3 Well, OPC's Dr. Marke has actually talked  
4 to the Professor himself, not just the student. He  
5 has been in touch with a number of other experts on  
6 the issue across all fields of study, not just the  
7 engineering aspect of it. He has left no stone  
8 unturned. So I encourage you, please inquire of  
9 him.

10 We want to get this right, and a blank  
11 check is not the way to do it. And, of course, if  
12 you have questions of me, specially as pertains to  
13 the little aspects, please ask me. Thank you.

14 JUDGE PRIDGIN: Mr. Chairman?

15 CHAIRMAN HALL: I'll let you take a  
16 breath. I'm going to ask this -- this question to  
17 Dr. Marke as well. But if the -- if the Commission  
18 were to establish an AAO somewhere along the lines  
19 of as it was getting requested but it was also open  
20 to requiring certain aspects of the pilot as  
21 recommended by OPC, what are the most important  
22 aspects of the pilot, from your perspective?

23 MR. OPITZ: So from my perspective, the  
24 most important aspect of the pilot is it provides a  
25 legal opportunity to do this because of the



1     uncertainty about what they're doing.

2             CHAIRMAN HALL: I guess in terms of  
3     gathering information and -- and analysis?

4             MR. OPITZ: So --

5             CHAIRMAN HALL: What aspects of the pilot  
6     are the most important?

7             MR. OPITZ: Perhaps Dr. Marke will offer a  
8     -- a better informed decision on the types of  
9     information gathered. But -- but from my standing  
10    here, I will say, I want to know the efficacy of  
11    what they're doing, is this producing a better  
12    result? And right now, to me, that answer is  
13    uncertain.

14            I want to know the cost benefit. I want  
15    know what is the benefit that's being received? Is  
16    it short-term? Is it long-term? You know, if --  
17    if the benefit is that, you know, there's less risk  
18    that if Missouri-American somehow decides to start  
19    pumping untreated river water through its system,  
20    which would cause, you know, leeching of lead into  
21    the system, well, I don't -- I hope that's not ever  
22    going to happen.

23            And I -- and I expect that it wouldn't  
24    last as long as it did in Flint. What happened in  
25    Flint, it's my hope and my belief, won't be

1 repeated here. So there is less risk here of  
2 having lead service lines. At least that's what I  
3 think.

4 And I hope the study would -- would talk  
5 about what benefits would be there. If it's the  
6 pilot. So I started to state little aspect, I  
7 believe it's a legal path forward, especially given  
8 the uncertainties.

9 I believe that an important and a vital  
10 aspect of this pilot and any pilot is whether we do  
11 the pilot and we learn that information. It has  
12 the teeth to inform how they move forward.

13 So right now, that's inconsistent with  
14 what the company is -- is asking for because  
15 they're saying, Yeah, we want the AAO, but, yeah,  
16 we'll do a few aspects of your pilot.

17 Well, that's not what I'm looking for. I  
18 want to have a thorough examination of the best way  
19 to do this, if at all, and use that to inform how  
20 they do it.

21 CHAIRMAN HALL: Okay. Well, I mean,  
22 essentially, what you just did was restate your  
23 entire argument for why the pilot is necessary.

24 And what I was interested in is what  
25 aspects of it are most important from your

1 perspective? But you know what? I'll just ask Dr.  
2 Marke.

3 MR. OPITZ: Thank you.

4 CHAIRMAN HALL: Thank you.

5 JUDGE PRIDGIN: Thank you. Any further  
6 Bench questions?

7 COMMISSIONER STOLL: No questions.

8 JUDGE PRIDGIN: All right. This looks to  
9 be the perfect time to take a mid-morning break?  
10 The clock in the hearing room shows 10:30. Let's  
11 resume at 10:45. I think we will stand in recess  
12 until 10:45. We are off the record.

13 (Break in proceedings.)

14 JUDGE PRIDGIN: All right. Good morning.  
15 We are back on the record. As I mentioned at the  
16 beginning of the hearing this morning, we are going  
17 to need to break somewhere around 11:45 for  
18 Commissioners to get to agenda.

19 I will look for a natural break. But if I  
20 am unable to find one, I may have to simply  
21 interrupt someone in the middle of a question or  
22 middle of an answer.

23 If so, I apologize in advance. I will do  
24 my best to -- to not do that. But if I have to, I  
25 have to.

1           Looking at order of witnesses, and I  
2   believe Mr. Naumick is the first witness listed to  
3   take the stand this morning, No. 1; is that  
4   correct?

5           MR. COOPER: That's correct, your Honor.

6           JUDGE PRIDGIN: Is there anything else  
7   from Counsel before he takes the stand?

8           MR. COOPER: Not from Missouri-American.

9           MR. OPITZ: Judge, I guess as we're  
10   getting into this -- and I don't know if it's  
11   applicable yet, but the parties did file separate  
12   orders of cross-examination.

13           I don't believe the order of the DED  
14   witness was the same. I believe everything else  
15   was. And -- and I guess just ask for clarification  
16   on which you would prefer to do?

17           JUDGE PRIDGIN: I have with me and I don't  
18   have a -- a preference, obviously, since we're all  
19   going to get to it anyway. I think I have -- just  
20   for convenience sake, I had Missouri-American's  
21   list of issues because it's the first one I found  
22   on EFIS.

23           If the parties are not able to agree and  
24   you want to -- you want to bring your dispute to me  
25   on the record once we get to the DED witness, I'll

1 be glad to rule on it then if you can't agree on it  
2 on an order of cross.

3 But as of now, I've just got the  
4 Missouri-American list in front of me. And I can  
5 get the other one on EFIS here if I need it.

6 MR. OPITZ: Okay. Thank you, Judge.

7 JUDGE PRIDGIN: I'm sorry?

8 MR. COOPER: Mr. Opitz, you're -- you're  
9 thinking it doesn't come up until Mr. Hyman takes  
10 the stand, right?

11 MR. OPITZ: That's correct. I believe  
12 there -- everything else is consistent.

13 MR. COOPER: Yeah.

14 JUDGE PRIDGIN: Okay. Thank you.  
15 Anything further before Mr. Naumick takes the  
16 stand? All right. Mr. Naumick, if you'll come  
17 forward to be sworn please, sir. If you'll raise  
18 your right hand to be sworn, please.

19 GARY A. NAUMICK,  
20 being first duly sworn to testify the truth, the whole truth,  
21 and nothing but the truth, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. COOPER:

24 JUDGE PRIDGIN: Thank you, sir. Please  
25 take a seat. And, Mr. Cooper, when you're ready

1     sir.

2           **Q     (By Mr. Cooper)   Please state your name.**

3           A     My name is Gary A. Naumick.   It's  
4     N-a-u-m-i-c-k.

5           **Q     By whom are you employed and in what**  
6     **capacity?**

7           A     I'm employed by the American Water Works  
8     Service Company, and my position is the Vice  
9     President of Corporate Engineering.

10          **Q     Have you caused to be prepared for**  
11     **purposes of this proceeding certain direct,**  
12     **rebuttal and surrebuttal testimony in question and**  
13     **answer form?**

14          A     Yes.

15          **Q     So is it your understanding that that**  
16     **testimony has been marked as Exhibits 1, 2 and 3**  
17     **for identification?**

18          A     Yes.

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

21          A     I do have -- actually, four inter-related  
22     corrections to make, minor corrections, which I can  
23     direct to you.

24          **Q     Would you go ahead and do that?**

25          A     Sure.   In my rebuttal testimony, I

1 actually just transposed some exhibit numbers, so  
2 I'll correct those for the record.

3 The first would be on page 7, line 4 of my  
4 rebuttal testimony where it says Schedule GAN RT-3,  
5 that should be corrected to say RT-1.

6 On line 7 of page 7 it says RT-4, that  
7 should be corrected to say RT-2. On page 8 of my  
8 rebuttal testimony where -- at Line 12, it  
9 references schedule GAN RT-1. That should be RT-3.

10 And on page 9 of my rebuttal, line 12  
11 references schedule RT-2. That should be corrected  
12 to Schedule RT-4.

13 **Q Do you have any other changes?**

14 A I don't.

15 **Q If I were to ask you the questions which**  
16 **are contained in Exhibits 1, 2 and 3 today, would**  
17 **your answers as -- as now amended be the same?**

18 A Yes.

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

21 A Yes.

22 MR. COOPER: Your Honor, I would offer  
23 Exhibits 1, 2 and 3 into evidence and tender the  
24 witness for cross-examination.

25 JUDGE PRIDGIN: All right. Any

1 objections? Hearing none, Exhibits 1, 2 and 3 are  
2 admitted. Cross-examination, DED?

3 MR. BEAR: No questions, your Honor.

4 JUDGE PRIDGIN: Thank you. For Staff?

5 CROSS-EXAMINATION

6 BY MS. MERS:

7 Q Good morning. Mr. Naumick; is that  
8 correct?

9 A Good morning. Good morning.

10 Q You mention on page 2 of your direct  
11 testimony that you are a participating member in  
12 the service line replacement collaborative; is that  
13 correct?

14 A That's correct.

15 Q And the formation of that collaborative  
16 was in 2016, correct?

17 A Correct.

18 Q And was that in response to a national  
19 conversation around lead water contamination or to  
20 the proposed lead and copper rule revisions that  
21 the EPA Advisory Group authored that supported a  
22 move towards full lead service line replacement?

23 A Primarily related to the -- really, the  
24 national issue about lead service lines and about  
25 lead service line replacement.



1           So it sought to bring together a number of  
2 stakeholders, which includes regulators, public  
3 health agencies, NGOs and utilities to come  
4 together in a collaborative way to help communities  
5 to move forward with lead service line  
6 replacements.

7           **Q    Okay. And you mentioned also in your**  
8 **direct testimony on page 7 that that there's been a**  
9 **growing body of research that indicates partial**  
10 **lead service lines have the potential to increase**  
11 **lead levels following a replacement, correct?**

12          A    Correct.

13          **Q    Do you know who is producing this**  
14 **research? Is that the EPA or Universities or**  
15 **focused organizations?**

16          A    I think it's all of the above. And  
17 probably very prominently the Water Research  
18 Foundation, which is the water utility -- US Water  
19 Utility industry's research that has a number --  
20 has had -- has a number of research projects  
21 related to lead either done or underway.

22          **Q    You also mentioned in your direct on page**  
23 **16 that Missouri-American is not recommending**  
24 **replacing home plumbing as part of this program,**  
25 **correct?**

1           A    Correct.

2           Q    Is that because lead service lines are the  
3   largest source of lead contamination in drinking  
4   water?

5           A    It is.  If -- if -- and I know there was a  
6   lot of talk about that in -- in the direct  
7   testimony, but if I could -- would you like me to  
8   kind of expand on that?

9           Q    Your -- your Counsel probably will help  
10   you on redirect for that one.

11          A    Okay.

12          Q    I also imagine, though, one of the  
13   justifications behind it, is it correct to say that  
14   home plumbing as opposed to the lead service line  
15   is probably a little bit less of a financial burden  
16   on homeowners?

17          A    Yes.  And, also -- but primarily, it's  
18   that it's a very finite bit of potential exposure  
19   to lead as compared to a lead service line.

20                In other words, the solder in a fixture is  
21   very much contained to -- to that faucet as  
22   compared to the length of the service line.

23          Q    Okay.  And you've also attached to your  
24   rebuttal testimony Schedule GAN RT-3, which lists  
25   utility community efforts and lead service line

1     **replacements, correct?**

2           A     Yes.

3           Q     Do any of those programs that you list in  
4     that schedule, do they cover the -- part of the  
5     cost or the entire cost of the customer portion of  
6     the lead service line?

7           A     I think there are various -- various  
8     approaches that that City and community have taken.  
9     And, again, some of them are municipal systems,  
10    maybe different, you know, rate-making approaches.  
11    So there are -- there have been a number of -- of  
12    approaches taken.

13          Q     And I believe your Counsel might have said  
14    in his opening this morning that American Water is  
15    pursuing similar efforts to the one proposed in  
16    Missouri and 16 other states or in some of your  
17    other jurisdictions?

18          A     We're moving with programs for lead  
19    service line replacement really across -- across  
20    our community. So many of them in various forms of  
21    the regulatory process as well as -- as field  
22    removals.

23          Q     Also, attached to your rebuttal is  
24    Schedule GAN RT-4, and that's a listing of  
25    resources developed for, by or relied upon by that

1     **lead service line collaborative, correct?**

2           A     Yes.

3           Q     And that includes resources and research  
4     regarding funding efforts, addressing racial and  
5     economic inequalities, legal challenges,  
6     communications and -- among other things, correct?

7           A     Correct.

8           Q     So from your understanding, is that the  
9     information that OPC would like Missouri-American  
10    customers to pay for to use state-wide in their  
11    proposed pilot program?

12          A     I think it's an example. And, again, that  
13    was really one of the purposes of the collaborative  
14    was to help communities who wanted to go forward  
15    with lead service line removals.

16                Cities, countries advertise all across the  
17    country facing the same problem. So it is  
18    recognized that it doesn't make sense for every  
19    city to go it alone.

20                So the collaborative was brought together  
21    to help provide resources to those communities.  
22    And the collaborative, which -- which I'm a  
23    participating member of, has posted, for instance,  
24    on its web site 143 different resources.

25                I -- I won't say that that's exhaustive.

1 There are -- there are others too -- you know,  
2 there are other studies and resources. But, again,  
3 that's the body -- that's the -- the -- the body of  
4 work that the collaborative has pulled together to  
5 put them in one place to help communities when they  
6 want to move forward.

7 Q So with the -- the 143 resources, that  
8 seems like it's a pretty good breadth of resources  
9 and research. Do you believe that OPC's proposed  
10 pilot program and their study is redundant and in  
11 the best use of ratepayer money then?

12 A It's largely redundant. Yes. There's a  
13 host of resources, and we're -- we're moving  
14 forward. We've done some of a lot of our own work.  
15 We've done some piloting on our own.

16 And have been really worked there a lot of  
17 the details in -- in the field where sampling,  
18 flushing, all the aspects of performing that lead  
19 service line replacement.

20 Q And my final question, are you familiar  
21 with the rebuttal testimony of OPC Witness DR.  
22 Geoff Marke?

23 A Yes.

24 Q Do you agree with the statement located on  
25 page 9 of his rebuttal testimony? And if you need

1 a moment to get there, let me know.

2 A Did you say rebuttal or surrebuttal?

3 Q Rebuttal.

4 A Okay. I'm there.

5 Q Okay. So on page 9, he states that, It is  
6 not clear what amount of lead in drinking water  
7 pose an urgent health risk. Do you agree with that  
8 statement?

9 A Can you direct me to the line?

10 Q One second. I'm sorry. It would start at  
11 1 and ends at 5. On page 5?

12 A Of rebuttal.

13 Q Yes. That was rebuttal.

14 A Oh, I'm sorry.

15 Q It's okay.

16 A I would actually give my answer to  
17 actually the answer that he gives on line 10, Both  
18 the EPA and the CDC have said that no amount of  
19 lead in water is safe for children.

20 MS. MERS: Okay. I have no further  
21 questions.

22 JUDGE PRIDGIN: Mr. Mers, than you. Cross  
23 from MECG?

24 MR. WOODSMALL: Very briefly, your Honor.

25 CROSS-EXAMINATION

1 BY WOODSMALL:

2 Q Good morning, sir.

3 A Good morning.

4 Q I see that you work in New Jersey; is that  
5 correct?

6 A That's correct.

7 Q Do you live in New Jersey as well?

8 A I do.

9 Q Are you a New Jersey American Water  
10 customer?

11 A I'm not.

12 MR. WOODSMALL: Okay. No further  
13 questions. Thank you.

14 JUDGE PRIDGIN: Thank you. Consumers  
15 Counsel? Public Counsel?

16 MR. OPITZ: A few, Judge.

17 CROSS-EXAMINATION

18 BY MR. OPITZ:

19 Q Mr. Naumick, do you still have page 9 of  
20 Dr. Marke's rebuttal testimony with you?

21 A I do.

22 Q And you read a portion of a sentence, and  
23 I believe you stopped after the comma. The rest of  
24 that sentence says, But neither agency supported  
25 that statement with regulatory action. Do you

1     **agree with that statement?**

2           A     I do.

3           MR. OPITZ: Judge, I have a few exhibits.  
4     I'd like to just get them marked all at the same  
5     time. May I approach and can Dr. Marke help me?

6           JUDGE PRIDGIN: Sure.

7           MR. OPITZ: This will be -- Judge, can you  
8     refresh my memory as to what we're on?

9           JUDGE PRIDGIN: This one will be No. 19

10          MR. OPITZ: No. 19. The DR OPC0034.

11          MR. OPITZ: It will be 04040.

12          JUDGE PRIDGIN: Okay. I don't have that  
13     one yet, so --

14          DR. MARKE: I'll bring that one.

15          MR. COOPER: What is 19?

16          MR. OPITZ: It's -- it's DR 04040. 20  
17     will be DR0034. 21 will have to be 21-C. It  
18     contains a confidential attachment, and that will  
19     be DR0044. 22 will be DR0045.

20          JUDGE PRIDGIN: Thank you.

21          MR. OPITZ: Judge, may I also have  
22     permission to cross from my seat?

23          JUDGE PRIDGIN: You may.

24          **Q     (By Mr. Opitz) Good morning, Mr. Naumick.**

25          A     Good morning.



1           Q    You are aware that Public Counsel sent  
2   some data requests to the company in this case,  
3   correct?

4           A    Yes.

5           Q    And you prepared some of those responses,  
6   is that correct?

7           A    Yes.

8           Q    So I've handed you some documents that  
9   have been pre-marked. If you'll take a look at  
10 what's been marked as Exhibit 19.

11           DR. MARKE: No. 9 is marked 19 to the --  
12 the number.

13           JUDGE PRIDGIN: DR0040.

14           A    Okay.

15           Q    (By Mr. Opitz) Have you got it with you?

16           A    I do.

17           Q    Okay. And -- and that data request is  
18 from Public Counsel to the company, and you  
19 provided the answer to that; is that correct?

20           A    Yes.

21           Q    Is this a true and accurate copy of the  
22 company's response?

23           A    I believe it is.

24           MR. OPITZ: Judge, at this time, I'd offer  
25 DR or OPC Exhibit 19 into evidence.

1 JUDGE PRIDGIN: Any objections? Hearing  
2 none, Exhibit 19 is admitted.

3 (Exhibit 19 was offered and admitted into  
4 evidence.)

5 Q (By Mr. Opitz) Mr. Naumick, if you would  
6 look at OPC Exhibit 20, which is DR0034, for a  
7 moment. And you would agree that this is a DR  
8 response Missouri-American sent to Public Counsel?

9 A Yes.

10 Q And would you agree that you prepared this  
11 response?

12 A Myself in conjunction possibly with  
13 Mr. Aiton since some of it's about the specific  
14 field activities.

15 Q So on the very back page, it indicates  
16 you're the responsible witness for this DR --

17 A Okay.

18 Q -- is that correct?

19 A Yeah. Okay. Yeah.

20 Q And is this a true and accurate copy of  
21 the company's response in this case?

22 A I believe it is.

23 Q Would you agree that this DR references  
24 your direct testimony, particularly the phrase  
25 "replacing pipe to just outside the home."

1           A    That's what it says.  Again, that's  
2   referencing a part of a sentence.  So if you'd  
3   like, I can fresh myself by looking at the -- the  
4   actual testimony.

5           Q    At the testimony?  Do you have a copy of  
6   your testimony with you?

7           A    Yeah, I do.

8           Q    It's at your direct testimony, page 9.

9           A    Okay.

10          Q    I believe lines 13 through 14 is what  
11   it's --

12          A    Okay.

13          Q    So would you agree with me earlier  
14   statement that this DR is asking for more  
15   information about your phrase "just outside the  
16   home?"

17          A    Yes.

18          Q    Do you agree that even though the company  
19   calls this full lead service line replacement, its  
20   current program, that sometimes some of the lead  
21   service line is left in place?

22          A    That would be a one-off.  There may be  
23   situations where that's a physical necessity.  As  
24   -- as the rest of that sentence says, the -- the  
25   primary approach is from the main into the home.

1           Generally, the lead service line will  
2     terminate maybe a foot inside the foundation of the  
3     home at the inside shut-off valve. And that is the  
4     desired and, in fact, I think predominate approach.

5           There will be situations where that's not  
6     accessible for some reason and, therefore, the  
7     necessity might be that we would go to the  
8     foundation and have to stop there.

9           **Q     So -- so you do agree there are instances**  
10    **where the full line is not replaced?**

11          A     There may be.

12          **Q     And based on the information in this DR,**  
13    **there are -- when that -- when there is some lead**  
14    **service line left in place, the company uses some**  
15    **kinds of coupling to make the connection; is that**  
16    **correct?**

17          A     Correct.

18          **Q     And is the purpose of that connection to**  
19    **reduce the galvanic corrosion?**

20          A     Correct.

21          **Q     And that's a way to, I guess, prevent lead**  
22    **from leeching in as a result from the different**  
23    **kinds of metals coming in contact?**

24          A     Correct.

25          MR. OPITZ: Judge, at this time, I'd offer

1 OPC Exhibit 20 into evidence.

2 JUDGE PRIDGIN: Any objections? No  
3 objections, Exhibit 20 is admitted.

4 (OPC Exhibit 20 was offered and admitted  
5 into evidence.)

6 Q (By Mr. Opitz) Mr. Naumick, if you will  
7 look at OPC Exhibit 21-C, which is DR-44. And  
8 since this is C, I'm not actually -- I believe the  
9 -- the confidential portion is an attachment that  
10 I'm not going to refer to, so I would won't ask to  
11 go into closed session. Would you agree this is a  
12 data request response provided by the company?

13 A Yes.

14 Q Okay. And you were the responsible  
15 witness for this --

16 A Yes.

17 Q -- response?

18 A Yes.

19 Q And you agree that this is a DR asking for  
20 the reports -- any reports resulting from the New  
21 Jersey's pipe replacement program?

22 A Yes.

23 Q And you would agree that no such report  
24 has been produced?

25 A No final report -- no final report was

1 produced.

2 Q I believe it -- so -- so when the question  
3 says, Provide all reports produced by the American  
4 Water subsidiaries in New Jersey relating to the  
5 intensive monitoring program during replacement  
6 work, your caveat is there may be reports, but  
7 you've not produced the final report?

8 A There may be draft report or -- or -- I  
9 know that there were sample results summaries, but  
10 no -- no final report.

11 Q And the company did not provide any of  
12 that to Public Counsel?

13 A Again, it wasn't working product.

14 MR. OPITZ: Judge, at this time, I'd offer  
15 OPC Exhibit 21-C into evidences.

16 (OPC 21-C was offered and admitted into  
17 evidence.)

18 JUDGE PRIDGIN: Any objections? Hearing  
19 none, 21-C is admitted.

20 (OPC Exhibit 21-C was offered and admitted  
21 into evidence.)

22 Q If you would take a look at OPC Exhibit  
23 22, Mr. Naumick, which is DR-45.

24 A Yes.

25 Q And you agree that this is a data request

1 asking for any reports produced by American Water  
2 subsidiaries in Illinois related to lead  
3 replacement, correct?

4 A Yes.

5 Q And no response has been provided, no  
6 report has been provided?

7 A No report was developed.

8 Q Is this a -- and you provided the response  
9 to this data request?

10 A Yes.

11 MR. OPITZ: Judge, I'd offer OPC Exhibit  
12 22 into evidence.

13 JUDGE PRIDGIN: Exhibit 22 has been  
14 offered. Any objections? Hearing no objections,  
15 Exhibit 22 is admitted.

16 (OPC Exhibit 22 was offered and admitted  
17 into evidence.)

18 Q (By Mr. Opitz) Mr. Naumick, if you would  
19 -- well, we probably didn't -- Mr. Naumick, if the  
20 company -- company's program continues, does  
21 Missouri-American intend to stop treating its  
22 water?

23 A No, we do not intend to stop treating our  
24 water.

25 Q If the Commission declines the

1 application, will Missouri-American continue to  
2 conduct partial replacements?

3 A Repeat that. I just want to make sure I  
4 understood the question.

5 Q So if the Commission declines the  
6 condition's AAO application in this case, will  
7 Missouri-American then continue -- resume partial  
8 replacement of -- of service lines?

9 A The company would do everything that it  
10 could in the field to not do a partial replacement.  
11 That would largely mean avoidance of those streets  
12 now.

13 If you have a situation with a leaking  
14 service, a leaking main, you have to do something.  
15 And so the company would be, in some circumstances,  
16 of having to do partials, but would seek to just,  
17 by avoidance, just literally stay away from these  
18 properties, stay away from those streets.

19 Q Thank you. So you worked with American  
20 Water, and so you have some knowledge of -- of  
21 their natural operations; is that correct?

22 A Yes.

23 Q Does American Water conduct partial  
24 replacements in other jurisdictions?

25 A We've -- we've taken an approach similar



1 to what we are, you know, proposing and, of course,  
2 you know, exercising in the field is -- is what I  
3 said, avoid partial replacements, every possible  
4 way to avoid it. And so, therefore, hopefully few,  
5 if any, partial replacements.

6 Q As I understand, a full service line  
7 replacement is for lead service pipes relatively  
8 new action by Missouri-American and -- and  
9 American's other subsidiaries; is that correct?

10 A Yes.

11 Q Does the company have any plans to address  
12 partial replacements that have already taken place  
13 over the -- the course of its history?

14 A It's -- it's something that's under  
15 consideration. It is not at the top of -- of the  
16 list. And the -- the reason being that because the  
17 work has been done, a new main has been -- or new  
18 service line has been put in the company side,  
19 we're not in a disruption status as -- as has been  
20 discussed as Dr. Marke testifies to.

21 When there's a disruption, that's when  
22 there's the highest risk of -- of release of lead.  
23 So that partial is done historically at least in a  
24 stable condition.

25 A It is something that we will be

1 considering, but they would not be at the front end  
2 of the -- of the priority list for mains that need  
3 to -- service lines that need to be replaced.

4 Q So you -- so you agree that if a partial  
5 placement has been conducted that it -- it will  
6 eventually return to a stable condition?

7 A That's -- that's generally the  
8 predominating research. But stable -- again,  
9 stable is a term that relates to this minute. Does  
10 it relate to tomorrow? Does it relate to next  
11 year? Does it relate to when a tree gets replaced?

12 You know, so that's -- stable in terms of  
13 yes, it's -- it's -- unless it's undergoing a  
14 disruption, it -- it would be in the stable  
15 condition you're talking about.

16 Q Can you tell me how long it takes to  
17 return to a stable condition if a partial  
18 replacement is conducted?

19 A There's some research that it can be hours  
20 or potentially days.

21 MR. OPITZ: Thank you. No further  
22 questions, Judge.

23 JUDGE PRIDGIN: Mr. Opitz, thank you. Any  
24 Bench questions?

25 CHAIRMAN HALL: Yeah.

1 JUDGE PRIDGIN: Chairman?

2 CROSS-EXAMINATION

3 CHAIRMAN HALL:

4 Q Good morning.

5 A Good morning.

6 Q Are you familiar with the lead service  
7 line replacement program in Pennsylvania?

8 A Generally speaking. I'm not intimately in  
9 tune with kind of the regulatory aspect of it.  
10 But, generally, yes.

11 Q My understanding was that there was an  
12 agreement reached between all the parties that --  
13 that resulted in the stipulation that was approved  
14 by the Commission there. Is that -- is that true?

15 A I believe that -- I believe that was the  
16 -- York Water Company, so it was not an American  
17 water property. But I believe it was a York Water  
18 Company over --

19 Q It was not -- not American -- it was not  
20 an American Water?

21 A The one that has reached agreement, I  
22 believe, is York Water. Pennsylvania American is  
23 presently seeking approval for its program within  
24 its rate case.

25 I don't believe that has been -- I'll --

1 I'll defer to others in the room who may know. But  
2 I don't believe that has been settled. The one  
3 that has been settled was the York Water Company  
4 program.

5 Q The -- the -- the program that is  
6 currently in Pennsylvania's and York American's  
7 rate case, is it the similar to the program being  
8 advanced here?

9 A Yes.

10 Q And my understanding is that the program  
11 that -- that Missouri-American is -- has  
12 implemented and -- and wants -- wants our blessing  
13 to continue implementing is -- is to -- to replace  
14 service lines in the -- in the course of -- of main  
15 replacements when they're -- when they are  
16 discovered?

17 A Correct.

18 Q And is that the -- the customary lead  
19 service line replacement program nation-wide?

20 A Generally speaking, yes. What would be  
21 the first priority or the mains that are part of  
22 the program and that would be either -- that's part  
23 of the plan program or part of an emergency that --  
24 you know, that main has ruptured, so we've got to  
25 be in that street. We'd like to handle everything,

1 the new main, the lead services in that street  
2 while the disruption has happened.

3 Others that would kind of fall into that  
4 would be coordination with town, repaving  
5 activities. We coordinate with towns if they're  
6 going to re-pave a street and we're working on the  
7 main that we'd like to get the service lines there,  
8 also. Those would be the -- really the primary  
9 parts of the -- we want to be the priority.

10 Q So it's -- so am I correct that -- that  
11 what the company is proposing is that it's got a  
12 list of -- of main projects, and then it's going to  
13 march through that list. And -- and when it  
14 discovers a lead service line in connection with  
15 the main where -- it wants to go ahead and do the  
16 replacement?

17 A Generally speaking, yes.

18 Q Okay. So -- and you've -- you've heard  
19 some of the arguments and I'm sure read some of the  
20 arguments of OPC that -- that that's not  
21 necessarily the best way to prioritize projects?

22 A Well, I'm not --

23 Q I mean, is that -- is that true? You --  
24 you have read those arguments?

25 A Yeah.

1           Q    Okay.  Is there -- I mean, there is  
2   something compelling about both sides of this -- of  
3   this argument.  I mean, I understand what -- what  
4   Missouri-American is -- is -- is saying.

5                   It makes no sense to do a partial  
6   replacement when the most efficient and effective  
7   process would be to go ahead and complete the  
8   replacement when you're -- when you're there  
9   on-site.

10          A    Yeah.

11          Q    At the same time, wouldn't it also make  
12   some sense to possibly prioritize schools or  
13   nursing homes or -- or perhaps low income areas?

14          A    The answer is yes.  And I think --

15          Q    Is there any way to marry it?

16          A    There is.  There absolutely is.  And we  
17   are open to that.  We are open to collaboration on  
18   -- on that.  The -- and we have brought up --  
19   because that is an area of collaboration.

20                   As an example, we, the water utility, are  
21   not the best or the right one to determine where  
22   our sensitive populations are.  But we're happy to  
23   engage, and I believe Mr. Aiton, has testified in  
24   some discussion with the Health Department who --  
25   who would have that information better.

1           So we're very open to that. And, yes, it  
2     can -- short answer, it can be. Yes, it can be a  
3     prioritization consideration.

4           **Q    Are you aware of that kind of**  
5     **collaboration mandated by a -- by a commission**  
6     **anywhere else in the country as part of the lead**  
7     **service line replacement program?**

8           A    I don't -- not to my knowledge. I don't  
9     believe that's been implicitly addressed.

10          **Q    Okay. If the company were -- were to not**  
11     **do the full lead service line replacement going**  
12     **forward and just do the partial replacement in**  
13     **connection with -- with the main replacement, would**  
14     **-- do you believe that there would be a reduction**  
15     **in capital investment resulting from that decision?**

16          A    Not necessarily. What -- what you stated  
17     earlier is -- is exactly the case, that there is a  
18     list of -- and involved with Mr. Aiton and others  
19     in the development of our planning study to develop  
20     those lists of needs that are good, valid needs.

21                There's a lot of old treatment facilities,  
22     a lot of old pipes. There's -- Missouri was hit a  
23     couple of Januarys ago with a record flooding, and  
24     so we're -- we're moving intakes higher.

25                So there's a -- there's a back log of --

1 of -- of valid needs. And so it's not necessarily  
2 true that this is -- that this has to be additive  
3 to that.

4 Q So and -- and this may be overly  
5 simplistic. But, I mean, is it -- is it, in fact,  
6 true that there's a pot of money that -- that  
7 Missouri-American has available to invest, and if  
8 it were -- if it were not to invest some portion of  
9 that in the customer lead service lines, it would  
10 invest that somewhere else within  
11 Missouri-American's service territory?

12 A I'd probably defer to someone else on the  
13 technicalities of that. But generally speaking,  
14 it's not so much the pot of money as consideration  
15 of rate impact and -- and so forth.

16 As I say, we could -- we have a much  
17 longer list of these, and we know it's not a viable  
18 rate impact to customers to come forward to do all  
19 of those at once.

20 Q Did -- did Missouri-American look at the  
21 -- the alternative of providing filters to  
22 customers as opposed to doing the -- the service  
23 line replacement?

24 A We've -- we've studied that. We've  
25 reviewed the research on that. We don't see -- we



1 don't see filters. It's not an apples and apples  
2 thing.

3 The pipes are -- are a pathway to possible  
4 ingestion. And, again, we do a multi-battery  
5 approach. We treat. We sample. And so we do a  
6 lot to protect.

7 But that a pathway is there. That pathway  
8 can -- can occur if a disruption happened by  
9 utility work, by -- by something -- something else.  
10 The filter -- some of the challenges with filters I  
11 can run through, types of filters, first, and the  
12 one that was referenced \$50 filter. It's kind of a  
13 pull-through filter.

14 And, yes, an NSF-approved cartridge can  
15 remove lead or contaminants. You've got about a  
16 hundred gallon life cycle, and that has to be  
17 replaced. So two -- two major problems with that.

18 No. 1, after a hundred gallons, it can  
19 actually have a breakthrough and be worse. So now  
20 we have thousands of customers responsible for  
21 doing that. Now I've got the burden of their  
22 self-policing their own health. Did they change  
23 that filter in time? The second thing with that is  
24 that's basically your refrigerator or whatever.  
25 It's not a whole house solution.

1           If I want to brush my teeth or my child  
2   wants to brush my -- brush their teeth upstairs, we  
3   could be taking the water up, the filtered water  
4   there.

5           So it's a point type of thing as you get  
6   to a whole house filter that actually costs a  
7   couple thousand dollars, so we don't see it as a  
8   viable tradeoff.

9           So we -- and many others, we have not seen  
10   filters at -- as good a solution. It would be  
11   better than New York, but it's not really anywhere  
12   near an equivalent type of long-term solution.

13          **Q   In your testimony, and I believe it was**  
14   **your direct testimony, you -- you indicated that --**  
15   **that the research shows that addressing the lead**  
16   **service line is more important than the plumbing**  
17   **fixtures within -- within the home. Could you**  
18   **explain why?**

19          A   Sure. Largely -- you know, on the one  
20   hand -- and I -- and I do agree with things. This  
21   is a complex issue. It has a lot of non-intuitive  
22   things that we would think of the partial better.  
23   but It's not. On the other hand, it's kind of  
24   simple.

25          Lead in contact with the water -- water

1 chemistry, it's aggressive and time that it's  
2 together is what causes the corrosion and the  
3 amount of leeching in.

4 So you remove the -- the large volume is  
5 really -- and there is some research kind of  
6 collaborating that it really does reduce the lead.

7 If we're down to the soldered in the  
8 faucet, that's that finite potential pathway of the  
9 lead.

10 And, honestly, our utility and really  
11 most, I think, across the country, are not  
12 proposing to get involved in the interior plumbing.

13 Let me say that lead piping within homes  
14 is very rare. We have not encountered that.  
15 Again, I'm not going to say there aren't any, but  
16 that's pretty, so once you're to that shut-off  
17 valve I talked about. Within the home, it's  
18 generally the solder within -- within a fixture.

19 That, no. 1, we agree it's the  
20 responsibility of the -- of the homeowner. But No.  
21 2, that's controllable pipe. You can flush that  
22 for 30 seconds, and you've cleared that spot where  
23 that water might have been in contact with that --  
24 with that lead solder as compared to if you tried  
25 to flush your line every time you turn on the

1 water, have to flush for eight or ten minutes.

2 So it's much more under the reasonable  
3 control of the -- of the homeowner either to  
4 replace it or to flush the main for 15 seconds.

5 Q Well isn't it -- isn't it also true that  
6 the fixtures in the home, if they aren't replaced  
7 every 10 or 15 years, which may be the norm, is --  
8 would take care of this problem?

9 A Correct. Because the -- because the rules  
10 of what could be manufactured -- I don't remember  
11 the year. I want to say in the '90s. Mandated  
12 virtually lead-free solder. So anything you would  
13 buy will be a -- a lead-free -- basically, a  
14 lead-free product.

15 Q And would have been lead-free at any time  
16 after sometime in the early '90s?

17 A I don't -- I can't remember the date. I  
18 think that's what -- when it was.

19 Q Looking at OPC's pilot program, I -- I  
20 could see a lot of similarity between that and some  
21 of the research conducted by the -- by the Water  
22 Research Foundation. It's -- it's my understanding  
23 that your -- your position is that -- that research  
24 has been done, there's no reason to duplicate it  
25 here?

1           A    There's a lot in the OPC pilot proposal  
2   that is either, we think, redundant or beyond the  
3   scope of a utility.

4                   There was talk about other sources, lead  
5   dust or lead paint.  It's really beyond our scope  
6   to --

7           Q    Is there anything within the pilot program  
8   that, from your perspective, actually could be  
9   useful, particularly it was -- if it was done in  
10   conjunction with the company's implementation of  
11   the program of --

12          A    You know, I might like to -- maybe it's  
13   just me as the scientist me.  I'd like to rephrase  
14   the word from pilot study to collaboration because  
15   I think that's what we're -- what we're talking  
16   about.

17                   And I think a couple of areas jump out at  
18   me.  One is the one that we talked about about  
19   identifying sensitive populations for consideration  
20   of prioritization.  Where is there a daycare or a  
21   cluster other the Health Department having any  
22   information about blood lead levels.

23                   I think that is a -- I think that is a  
24   good one.  Other one, which we will take forward,  
25   but we seek anybody and all support in is any

1 funding, any -- any opportunity for -- for grant  
2 funding.

3 We are very much -- would welcome that  
4 possibility. I think that is one that we would  
5 certainly like the support of -- of stakeholders.  
6 And those are probably the two primarily that come  
7 to -- come to my mind of -- of key areas to work  
8 on.

9 Q I believe you, in cross-examination,  
10 indicated that if -- if the AAO was not awarded,  
11 then your understanding is -- is that the company  
12 would cease -- cease doing the full lead service  
13 line replacements; is that correct?

14 A Yes.

15 Q And you may not be the -- the correct  
16 witness to answer this question, and if so, that's  
17 fine. But what -- if the -- if the Commission were  
18 to take the position that the customer -- that  
19 replacement of the customer-owned line should be  
20 treated the same way as the company-owned line,  
21 meaning it -- it should be included in -- in -- in  
22 rate base as of the next rate case, but there  
23 should not be carrying costs between the time of  
24 the expense and when new rates are set, what would  
25 the company's position be there?

1           A    Oh, I think you're right. I need to defer  
2   that one to -- to others.

3           Q    So now every time I tell a witness that  
4   you may not be the right guy to answer, that --  
5   that's the response I get, but --

6           A    I've heard that one anyway.

7           Q    I guess that's my own fault. Okay. Well,  
8   I'll be interested in getting an answer to that  
9   question from another company witness if -- if  
10   possible. And with that, I have no further  
11   questions. Thank you.

12          A    Could I -- could I --

13               JUDGE PRIDGIN: Thank you. Any questions?  
14   Commissioner Stoll?

15          A    Only if you'd like, but I didn't feel like  
16   I answered your question on prioritization as well  
17   as I could. Would you like to hear me talk a  
18   little more?

19          Q    **(By Chairman Hall) Sure. Sure.**

20          A    And, again, I think -- I think that is an  
21   area. To give -- to give you an example, when we  
22   say our main replacement program, we -- and, again,  
23   Mr. Aiton could talk for hours on this.

24               But we're replacing the main because of  
25   problems with it. It's broken four times or six

1 times. That's how our list goes -- goes forward.

2 And to date, you know, lead service lines  
3 have not been one of those -- one of those factors.  
4 Could be added in and that's an area we're open to  
5 have -- have collaboration on.

6 Again, we don't want to stop what we're  
7 doing. But to give you -- give you maybe the two  
8 ends of that, if a pipe is 60 years old, but it  
9 wasn't at the top of our list, and there are 50  
10 homes with lead service lines, yeah, I would  
11 consider it appropriate and maybe that moves up  
12 above the 80-year-old pipe that had a couple  
13 breaks.

14 On the other hand, if it's four years and  
15 there's one home with lead, no, it would not. So  
16 -- so it's not an all or nothing. But -- but --  
17 but I think the way to keep the good value of the  
18 mains that we're doing and add this additional  
19 benefit into prioritization would be a reasonable  
20 -- would be a reasonable thought process.

21 CHAIRMAN HALL: Okay. Thank you.

22 JUDGE PRIDGIN: Commissioner Stoll?

23 COMMISSIONER STOLL: Okay. Yeah. I just  
24 have a couple questions.

25 CROSS-EXAMINATION



1 BY COMMISSIONER STOLL:

2 Q One of the issues here relates to the  
3 customer-owned service line. So I wanted to ask,  
4 are there other states where there are  
5 customer-owned service lines in American Water's  
6 service territory? Or is this --

7 A Yes. Yes.

8 Q Could you kind of expand on that? Do you  
9 know -- like in Illinois and New Jersey and  
10 Pennsylvania?

11 A Yeah.

12 Q There are?

13 A Yes, there are. In most places, there are  
14 some. Our estimate is about 30,000 company-wide.  
15 Our estimate is about a 150,000 of -- of  
16 company-owned lead service lines.

17 We don't always have as much record about  
18 what is on the customer side, but, generally  
19 speaking, in many cases, if it was lead on this  
20 side, it's lead on the other side.

21 Q Yeah. So and this -- and this may be in  
22 your testimony. But would -- how are those states  
23 treating replacement of customer-owned service  
24 lines? Are they -- are they socializing or, as  
25 they like to say in some states, using uplift to

1     **replace those lines?**

2           A     Basically, we are in process in other  
3     states and seeking to move forward very similar to  
4     here --

5           **Q     Okay.**

6           A     -- and in other states.

7           COMMISSIONER STOLL:   Okay.  I think that's  
8     all now.  Thank you.

9           JUDGE PRIDGIN:  Commissioner Stoll, thank  
10    you.  Any further Bench questions?  All right.  
11    Thank you.

12           This looks to be a pretty natural place to  
13    break.  I've got about 20 till 12, and the  
14    Commission has agenda at noon.  So when we resume,  
15    Mr. Naumick will be back on the stand for re-cross  
16    based on Bench questions and redirect.  And then  
17    the next witness will be Mr. LaGrand where.

18           Anything further from Counsel before we go  
19    off the record?  Hearing nothing, let me verify  
20    with the Bench.  I plan on breaking for agenda and  
21    for lunch.  Will 1:30 work for everyone on the  
22    Bench?  1:30?

23           COMMISSIONER STOLL:  Sure.

24           JUDGE PRIDGIN:  All right.  That being the  
25    case, we will stand in recess until 1:30.  Thank

1     you.   We are off the record.

2                 (Lunch recess.)

3                 JUDGE PRIDGIN: All right. Good  
4     afternoon. We are back on the record. As we  
5     adjourned for agenda and lunch, I believe we were  
6     in the middle of Mr. Naumick's testimony.

7                 I think we got through cross-examination,  
8     and we're now ready for re-cross based on Bench  
9     questions. Is there anything from Counsel before  
10    we begin that? All right. Hearing nothing, I  
11    guess we can move on to re-cross. I think we'll  
12    start with DED. Any questions?

13                MR. BEAR: No questions, your Honor.

14                JUDGE PRIDGIN: Staff?

15                MS. MERS: No questions. Thank you.

16                JUDGE PRIDGIN: MECG?

17                MR. WOODSMALL: No questions.

18                JUDGE PRIDGIN: I don't believe  
19    Mr. Coffman is here. OPC?

20                MR. OPITZ: Briefly, Judge.

21                         RE CROSS EXAMINATION

22    BY MR. OPITZ:

23                Q    Mr. Naumick, prior to break, the Chairman  
24    had discussion with you regarding a utility in  
25    Pennsylvania named York. Do you recall that?

1           A    Yes.

2           Q    And the discussion was related to there  
3   was some kind of settlement reached in that case  
4   that you were aware of?

5           A    There was some sort of a proceeding and  
6   agreement. I don't know if it was a case or what  
7   it was, but yes.

8           Q    Okay. Are you -- are you aware that York  
9   was in violation of the lead and copper rule prior  
10  to the agreement being reached?

11          A    I wasn't aware of the details. I -- I  
12  wouldn't disagree with what you're saying.

13          Q    And Missouri-American is presently  
14  compliant with the lead and copper rule?

15          A    Correct.

16          Q    Commissioner Stoll had inquired of you  
17  about some of the utility -- your -- American  
18  Water's activities in other territories. Do you  
19  recall that?

20          A    I do.

21          Q    And the company is proposing similar  
22  activities in all of those other states; is that  
23  correct?

24          A    Proposing similar programs in the  
25  regulatory environment.

1           Q   And you would agree that, at this point,  
2   no other state has given a Missouri-American, I  
3   guess, affiliate or a subsidiary of American  
4   approval to do that -- one of those programs; is  
5   that correct?

6           A   I think the status is that -- let  
7   regulatory -- they're in process in a number of  
8   states. There was Legislation in Indiana that, you  
9   know, has a proceeding forward, but they're in the  
10   regulatory process. They're in process in a number  
11   of states.

12          Q   So right now, there has no approval in any  
13   other state to this?

14          A   I don't believe so.

15               MR. OPITZ: Thank you. That's all I have.  
16   Thank you.

17               JUDGE PRIDGIN: Mr. Opitz, thank you.  
18   Redirect?

19               MR. COOPER: Yes, your Honor. Just a  
20   moment. Judge, I would like to mark an exhibit.

21               JUDGE PRIDGIN: This is Exhibit 23.

22               MR. COOPER: This will be  
23   Missouri-American's response to OPC DR 0043. I get  
24   give one to the witness, too. That may be  
25   important.

1 MR. NAUMICK: Thanks.

2 REDIRECT EXAMINATION

3 BY MR. COOPER:

4 Q Mr. Naumick, earlier today, OPC asked you  
5 some questions about some Missouri-American DRs.  
6 Do you remember that?

7 A Yes.

8 Q And I believe two of those were OPC  
9 DR-0044, which is Exhibit 21-C, and OPC DR-0045,  
10 which was Exhibit 22. Do you remember that?

11 A Yes.

12 Q And I believe that both those -- both  
13 those responses references the company's response  
14 to OPC 0043?

15 A Yes.

16 Q Before you, you have what's been marked as  
17 Exhibit 23 for identification. Do you recognize  
18 that?

19 A Yes.

20 Q What is it?

21 A It's the response -- the supplemental  
22 response to OPC 43.

23 Q And when you say supplemental response,  
24 does it include the base response as well? If  
25 you'll turn to --

1           A    Yes.

2           Q    Okay.  And I believe -- well, were you  
3   responsible for that response?

4           A    Yes.

5           Q    Does it appear to be a true and accurate  
6   copy of your response to OPC DR-43?

7           A    Yes.

8           MR. COOPER:  Your Honor, I'd offer  
9   Exhibit 23 into evidence.

10          JUDGE PRIDGIN:  Any objections?  Hearing  
11   none, Exhibit 23 is admitted.

12          (Exhibit 23 was offered and admitted.)

13          Q    (By Mr. Cooper)  Mr. Naumick, you also,  
14   during the questions earlier, talked about filters  
15   and the consideration of filters in the home.  Do  
16   you remember that?

17          A    Yes.

18          Q    And I believe that you talked about a  
19   pitcher filter was one of them, and you also  
20   mentioned a whole house filter.  Is there also a  
21   tap specific filter as well?

22          A    Yes.

23          Q    And are there issues with those tap  
24   specific filters?

25          A    It would be similar to what I mentioned.

1 That would be a -- something that fits on --  
2 retrofits or screws onto -- to the faucet tap.

3 So it would have some of the same  
4 shortcomings as the picture filter, for instance,  
5 that it only helps mitigate the issue in one  
6 location.

7 Secondly, just found a lot of just  
8 operational problems with that. Folks have  
9 designer faucets and -- type of things. And some  
10 -- sometimes they're not put on right or they don't  
11 fit or if -- if you try to do it, it breaks the --  
12 you know, it breaks the faucet. So there have been  
13 -- there have been some issues with -- with those  
14 as well.

15 But -- but, again, functionally, they  
16 would function similar to the pitcher filter. It  
17 would be one -- one tap that treated water coming  
18 through for that.

19 Q And I think in regard to the pitcher  
20 filter, you described the need to periodically  
21 change the filter; is that true of the tap filters?

22 A Yeah. It would be. It would be similar  
23 in that way.

24 Q I think you also mentioned a -- sort of a  
25 whole house filter that was at a higher cost; is



1     **that right?**

2           A     Yes.

3           **Q     And -- and do they have the -- the**  
4     **changing of filter issue?**

5           A     They would have a -- whether it be  
6     changing a filter or regeneration. But yes, it  
7     would require -- it would require periodic  
8     remediation by the -- by the homeowner to keep them  
9     working properly.

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

12           JUDGE PRIDGIN: All right. Thank you.  
13     Mr. Naumick, thank you very much. You may step  
14     down.

15           MR. NAUMICK: Thank you.

16           JUDGE PRIDGIN: I believe Mr. LaGrand is  
17     the next witness.

18           MR. COOPER: Yes, your Honor.

19           JUDGE PRIDGIN: Okay. Come forward to be  
20     sworn, please, sir.

21                         BRIAN LAGRAN,  
22     being first duly sworn to testify the truth, the whole  
23     truth, and nothing but the truth, testified as follows:

24                         DIRECT EXAMINATION

25     BY MR. COOPER:

1 JUDGE PRIDGIN: Thank you, sir. You may  
2 have a seat. Mr. Cooper, when you're ready, sir.

3 Q (By Mr. Cooper) Please state your name.

4 A My name Brian LaGrand, L-a-G-r-a-n-d.

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

7 A I'm employed by Missouri-American Water,  
8 and I am the Director of Rates.

9 Q Have you caused to be prepared for the  
10 purpose of this proceeding certain direct, rebuttal  
11 and -- let me back up. Yes. Direct, rebuttal and  
12 surrebuttal in question and answer form?

13 A Yes, I have.

14 Q And is it your understanding that that  
15 testimony has been marked as Exhibits 4, 5 and 6  
16 for identification?

17 A Yes.

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

20 A Yes. We do have one change to the direct  
21 testimony.

22 Q Okay. What page?

23 A That is on Page 9, lines 9 and 10. And we  
24 would request to strike those lines.

25 Q Are there any other changes you need to

1     **make?**

2           A     No, there are not the.

3           Q     **If I were to ask you the questions which**  
4     **are contained in Exhibits 4, 5 and 6 today, would**  
5     **your answers as now amended be the same?**

6           A     Yes, they would.

7           Q     **And are those -- those answers true and**  
8     **correct to the best of your information, knowledge**  
9     **and belief?**

10          A     Yes, they are.

11          Q     **Okay.**

12               MR. COOPER: Your Honor, I would offer  
13     Exhibits 4, 5 and 6 into evidence and tender the  
14     witness for cross-examination.

15               JUDGE PRIDGIN: Any objections? Hearing  
16     no objections, Exhibit 4, 5 and 6 are admitted.

17               (Exhibits 4, 5 and 6 were offered and  
18     admitted into evidence.)

19               JUDGE PRIDGIN: Cross-examination, DED?

20               MR. BEAR: No questions.

21               JUDGE PRIDGIN: Staff.

22                               CROSS-EXAMINATION

23     BY MS. MERS:

24           Q     **Good afternoon, Mr. LaGrand.**

25           A     Good afternoon.

1           Q    In your surrebuttal testimony on page 4,  
2   you claim that the short-term debt rate is  
3   inappropriate because all of these are short-term  
4   projects that are being done over the long-term; is  
5   that correct?

6           A    Let me just turn to that in my testimony.

7           Q    Sure.

8           A    Which page is that on?

9           Q    It's on page 4 of your surrebuttal?

10          A    Yeah. Yes.

11          Q    Okay.

12          A    Okay. Yes. I see that.

13          Q    But this current AAO case is just  
14   addressing the portion of expenses that have  
15   already been incurred that are predating the rate  
16   case until the conclusion of the rate case and not  
17   your entire lead service line replacement program  
18   correct?

19          A    Correct. Just costs from 2017 to through  
20   May of '18.

21          Q    Okay. So this requested AAO has a  
22   definite end and beginning date, correct?

23          A    Correct.

24          Q    And that's almost a short-term time frame  
25   of not even two years, correct?

1           A    It is less than two years, yes.

2           Q    Okay.  And I'm -- I'm going to put you on  
3   the spot here.  But do you have an idea on -- if --  
4   for the projected costs for this -- this -- the  
5   time frame until May 31st, 2018, could you  
6   guesstimate what the average bill impact for  
7   Missouri-American customers would be?

8           A    I've not done that calculation.

9           Q    Okay.

10           MS. MERS:  Thank you.  That's all I have.

11           MR. LAGRAN:  Okay.

12           JUDGE PRIDGIN:  Mr. Mers, thank you.

13   MECG.

14           MR. WOODSMALL:  Yes.  Very briefly, your  
15   Honor.

16                               CROSS-EXAMINATION

17   BY MR. WOODSMALL:

18           Q    Good afternoon, sir?

19           A    Good afternoon.

20           Q    You're involved in current rate case; is  
21   that correct?

22           A    Yes, sir.

23           Q    And you've done other water rate cases; is  
24   that correct?

25           A    No.  This is my first rate case.

1           Q    Okay.

2           A    Water -- water rate cases I've been  
3 involved in, yes.

4           Q    Okay. Do you know who Constance D.  
5 Eppenstall is?

6           A    I do.

7           Q    Who is she?

8           A    She is our witness -- witness in our case.  
9 She works for Jeanette Plumbing, and she has put  
10 together our cost of service study.

11          Q    And would you agree that the cost of  
12 service study attempts to allocate costs to the  
13 various customer classes?

14          A    That's my understanding.

15          Q    And it attempts to allocate costs to the  
16 cost causer; is that correct?

17          A    Yes. I believe so.

18          Q    Okay. Now, real quickly, quick question,  
19 Staff was asking about the short-term debt costs.  
20 Let me ask you point blank. You've agreed to go  
21 forward with this program if you get carrying costs  
22 at your regular rate of return. Would the company  
23 go forward with the lead service line replacement  
24 program if costs -- if the carrying cost is  
25 short-term debt?

1           A    If that's what the Commission orders, the  
2   company would -- would accept that.

3           Q    So would you still go ahead and go forward  
4   at that short-term debt cost?

5           A    Yes.

6           MR. WOODSMALL: Thank you. No further  
7   questions. I'm sorry.

8           JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
9   Consumers Council is not here. Public Counsel?

10          MR. OPITZ: Yes, Judge. Can I cross from  
11   my seat?

12          JUDGE PRIDGIN: You may.

13          MR. OPITZ: Thank you.

14                   CROSS-EXAMINATION

15   BY MR. OPITZ:

16          Q    Mr. LaGrand, can you tell me what account  
17   the company is proposing to book these costs into?

18          A    Yes. We requested -- in I believe my  
19   direct testimony requested they be booked into  
20   NARUC Account 186, which is Miscellaneous Deferred  
21   Debits.

22          Q    And is that the ultimate treatment that  
23   you -- that the company expects to continue doing  
24   is continue booking them in Account 186? You were  
25   here for the opening statements, correct?

1           A    Yes.

2           Q    And do you recall hearing your Counsel  
3 mention an Account 3 -- I think it was 345?

4           A    Yes. Which is the services account.

5           Q    Services account?

6           A    Yes.

7           Q    And that's the ultimate place where the  
8 company wants to book these costs; is that correct?

9           A    In our -- in our rate case, we are -- we  
10 -- in my direct testimony, we talked about that as  
11 the preferred treatment.

12          Q    And that's -- as I understand, the company  
13 wants to put the -- anything that's allowed to be  
14 deferred in 186 into Account 345; is that correct?

15          A    Yes. That's -- that's in the rate case  
16 that's what we're asking for. Not as part of this  
17 case.

18          Q    Over -- what number of years do you  
19 propose to amortize any lead service line deferred  
20 debit in Account 186?

21          A    Are you asking about the amount that would  
22 be booked between January 1st of 2017 through May  
23 of '18?

24          Q    I guess, just in general, what  
25 amortization period are you proposing?



1           A    We propose the same amortization as in the  
2   services account, which I believe is consistent  
3   with my direct testimony in the direct case.

4           Q    Okay. And how many years is that  
5   amortization or that services account?

6           A    I don't, -- I don't have that number right  
7   in front of me, but I believe the services -- the  
8   Commission-approved services depreciation rate is  
9   2.92 percent. I may be not exactly right there.  
10   But it's approximately there.

11          Q    And -- and so that -- that equates to, I  
12   guess, an approximate 65-year average service --  
13   service life?

14          A    If it's 3 percent, it would be closer to,  
15   you know, 30 to 35 years.

16          Q    And -- and so that 2.92 percent for the  
17   services account is a remaining depreciation life  
18   rate, which includes salvage, cost of removal and  
19   salvage?

20          A    Yes. I believe so.

21          Q    However, if you agree that the company  
22   isn't proposing to own the lines that it's  
23   replacing for customer-owned lead service lines; is  
24   that correct?

25          A    Yes. The customer would still own the

1 line.

2 Q So have you made any proposal to change  
3 that depreciation rate percentage? Because if the  
4 customer owns it, the company wouldn't be able to  
5 receive salvage on that property; is that correct?

6 A Well, I'm sure not an depreciation expert,  
7 but that -- yes, the company -- if it as salvage,  
8 the company would not get any funds from that.

9 Q So that if there is an order granting  
10 deferral, that depreciation rate applied, would you  
11 agree that that should be different than the 9.2992  
12 that's currently proposed? 2.92. Sorry.

13 A We could -- we would certainly be only to  
14 looking at alternatives.

15 Q Would you agree that the average service  
16 life attributed to Customer Services Account 345 is  
17 65 years?

18 A I believe in our depreciation order, I  
19 believe that that is the number.

20 Q Thank you. You're aware that the company  
21 recently filed a -- a -- I guess updated figures in  
22 its rate case; is that correct?

23 A Yes. That's correct.

24 Q And do you recall what the balance in  
25 Account 345 services is at that date of the update?

1           A    I do not know that balance.

2           Q    If -- if I were to show you a -- I guess a  
3   copy of the utility plant and service balances as  
4   of June 30th, 2017, would that refresh your  
5   recollection?

6           A    Perhaps.

7           MR. OPITZ: Judge, may I approach?

8           JUDGE PRIDGIN: You may.

9           Q    (By Mr. Opitz) And take a look at that,  
10   and I'm going ask you about 345. Have you been  
11   able to --

12          A    Yes.

13          Q    Okay. Mr. LaGrand, having reviewed this  
14   document, can you tell me what the company's total  
15   balance in Account 345 was as of the update?

16          A    Forty -- approximately \$47 million.

17          Q    Okay. Do you agree that the company's  
18   lead line replacement program is projected to  
19   include 3,000 lines per year?

20          A    Yes. That's our current estimate.

21          Q    And your current estimate is that the  
22   average cost for each line will be \$6,000; is that  
23   correct?

24          A    Yes. That's correct.

25          Q    And so I guess -- I think you can -- so

1 would you agree that -- that 9,000 -- so that in 33  
2 years times 3,000 lines is 9,000 lines?

3 A Yes. I would agree with that.

4 Q And so 9,000 lines times \$6,000 is  
5 54 million. Would you agree to that?

6 A Yes.

7 Q And so if -- if those numbers are accurate  
8 and the estimates hold true, in three years time,  
9 Missouri-American Water would exceed its current  
10 services account balance; is that correct?

11 A Yes. Based on those numbers, yes.

12 Q For this one project alone?

13 A Correct.

14 Q Mr. LaGrand, do you know how many  
15 customers Missouri-American Water has?

16 A I believe approximately 470,000 between  
17 water and sewer.

18 Q Okay. And do you know how many of those  
19 are residential?

20 A I don't know off the top of my head, no.

21 Q Okay.

22 MR. OPITZ: Judge, I have some data  
23 requests I'd like to ask the witness about. May I  
24 approach?

25 JUDGE PRIDGIN: You may.

1 MR. OPITZ: And may I have Mr. Hyneman  
2 help me out if he's willing.

3 JUDGE PRIDGIN: Certainly.

4 MR. OPITZ: So I -- I believe this is  
5 Exhibit 24.

6 JUDGE PRIDGIN: That's correct.

7 MR. OPITZ: And it will be DR-16. And D  
8 -- Exhibit 25 will be DR-0024.

9 JUDGE PRIDGIN: And I've got -- I have  
10 0025 that was just handed to me. That will be No.  
11 25, Mr. Opitz?

12 MR. OPITZ: That will be No. 26. For 25,  
13 I have 0024.

14 JUDGE PRIDGIN: What did you say 26 was?

15 MR. OPITZ: 26 will be 0025.

16 JUDGE PRIDGIN: Is this all of them?

17 MR. OPITZ: Yeah. It should be all of  
18 them.

19 JUDGE PRIDGIN: Okay. If you'll give me a  
20 moment and let me make sure I've got -- I've got --  
21 as Exhibit 24, I've got DR-0016; is that correct?

22 MR. OPITZ: Yes. Yes, Judge.

23 JUDGE PRIDGIN: Okay. And then 25 will be  
24 0024?

25 MR. OPITZ: Yes, Judge.

1 JUDGE PRIDGIN: And then 26 will be 0025?

2 MR. OPITZ: Yes, your Honor.

3 MR. OPITZ: May I proceed, Judge?

4 JUDGE PRIDGIN: Please.

5 Q (By Mr. Opitz) All right. Mr. LaGrand,  
6 you're aware that Public Counsel sent some data  
7 requests to the company in this case, correct?

8 A Yes, I am.

9 Q And you prepared some of the responses; is  
10 that correct?

11 A That is correct.

12 Q If you would, would you please take a look  
13 at Exhibit 24, which is DR 16?

14 A Okay.

15 Q And would you agree that you provided the  
16 response to that?

17 A Yes. I believe so.

18 Q And you agree that this provides the  
19 details of how the company calculated the yearly  
20 projection of pipe replacement?

21 A Correct.

22 Q And you agree that this is a true and  
23 accurate copy of the company's response?

24 A Yes.

25 MR. OPITZ: Judge, at this time, I'd offer

1 Exhibit 24 into evidence.

2 JUDGE PRIDGIN: Any objections? No  
3 objections, Exhibit 24 is admitted.

4 (Exhibit 24 was offered and admitted into  
5 evidence.)

6 Q (By Mr. Opitz) Mr. LaGrand, would you  
7 take a look at Exhibit 25, which is DR-0024?

8 A Okay.

9 Q And this is a -- a data request that you  
10 provided the response to; is that correct?

11 A Yes. That is correct.

12 Q And is this a true and accurate copy of  
13 that response?

14 A Yes.

15 Q You agree that there is no legal or  
16 regulatory requirement requiring Missouri-American  
17 to replace customer-owned service lines?

18 A Well, I'm not a lawyer, so I don't want to  
19 comment on the legal requirements. But to my  
20 knowledge, there's not a regulatory requirement.

21 Q The answer you provided is that there is  
22 no current legal or regulatory requirement that the  
23 company replace these lines; is that correct?

24 A Yes. That is the answer here.

25 MR. OPITZ: Judge, at this time I'd offer

1 Exhibit 25 into evidence.

2 JUDGE PRIDGIN: Any objections? No  
3 objections, Exhibit 25 is admitted.

4 (Exhibit 25 was offered and admitted into  
5 evidence.)

6 Q (By Mr. Opitz) Mr. LaGrand, if I could  
7 point your attention to Exhibit 26, which is the  
8 company's response to DR-25. Would you agree that  
9 you provided the response to that data request?

10 A I don't recall that I was the one that  
11 prepared this. But -- but --

12 Q Mr. LaGrand, do you recall that -- are you  
13 aware that the company had left off the names of  
14 the responsible witnesses on some of the data  
15 request responses it provided early on in this  
16 case?

17 A Yes. I do recall that.

18 Q And are you aware that the company  
19 provided an updated Excel sheet identifying the  
20 data request responses and the name of the witness  
21 responsible?

22 A I do.

23 Q Would you agree that that spreadsheet  
24 indicated that you were the responsible witness for  
25 the response to DR-0025?



1           A    I have no reason to doubt that it doesn't  
2   say that.  I just don't recall.

3           Q    Would it refresh your memory if I showed  
4   you a printout of that sheet?

5           A    Sure.

6           MR. OPITZ:  Judge, may I approach?

7           JUDGE PRIDGIN:  You may.

8           Q    (By Mr. Opitz)  Looking for DR-25.

9           A    Yeah.  Okay.

10          Q    Having reviewed that document, would you  
11   agree that you're the witness responsible for  
12   DR-25?

13          A    Yes.

14          Q    Would you agree that the exhibit copy of  
15   DR-25 is a true and accurate copy of the company's  
16   response to that data request?

17          A    Give me a moment to look at the -- at the  
18   attachments.

19          Q    No problem.

20          A    Okay.  Yes.  I believe that is.

21          Q    Thank you.

22          MR. OPITZ:  Judge, at this time, I'd offer  
23   Exhibit 26 into evidence.

24          JUDGE PRIDGIN:  26 has been offered.  Any  
25   objections?  No objections, 26 is -- 26 is

1 admitted.

2 (Exhibit 26 was offered and admitted into  
3 evidence.)

4 Q (By Mr. Opitz) Mr. LaGrand, are you a  
5 Certified Public Accountant?

6 A I used to be. I'm not anymore.

7 Q Okay. Can you tell me when your, I guess,  
8 certification -- did it expire?

9 A Lapsed? I mean, I am -- I am a Certified  
10 Public Accountant inactive in the state of Ohio.  
11 So last time I was practicing was, you know, 1997,  
12 six.

13 Q Okay. And so you -- so am I correct in  
14 understanding that you're not a Certified Public  
15 Accountant in the State of Missouri?

16 A That's correct.

17 MR. OPITZ: Okay. That's all the  
18 questions I have. Thank you, Judge.

19 JUDGE PRIDGIN: Mr. Opitz, thank you. Any  
20 Bench questions? Mr. Chairman?

21 CROSS-EXAMINATION

22 BY CHAIRMAN HALL.

23 Q Good afternoon.

24 A Good afternoon, Mr. Chairman.

25 Q Looking at your direct testimony on page

1 5, I want to make sure I understand these numbers.

2 A Yes, sir.

3 Q When you estimate the 3,000 replacement  
4 annually cost for full year between 9 million and  
5 16.5 million; is that correct?

6 A That's correct.

7 Q And does that include any carrying costs?  
8 Or is that just the actual out-of-pocket expense?

9 A That's the -- the -- the capital spend,  
10 the cash out the door.

11 Q Okay. And 3.8 million and 6.9 million  
12 through May of 2018, what's the start? Is that  
13 calendar year '17 and then through five months of  
14 '18?

15 A Is the -- the amounts on page - or excuse  
16 me -- in lines 8 and 9, the 3.8 million and the  
17 6.9 million, that is the -- that is the 2018 amount  
18 through May. And if you add the 2 million from  
19 2017, that's how you get to the total on line 10.

20 Q Okay. And so the 5.8 and 8.9 is the --  
21 that's the amount for -- for calendar year '17 and  
22 the first five months of '18?

23 A Yes. That's correct.

24 Q And -- and that does not include any --  
25 any carrying costs?

1           A    That is correct.

2           Q    I believe, in response to an inquiry from  
3   Mr. Woodsmall, you indicated that the company would  
4   continue the program, even if the Commission  
5   ultimately only awarded short-term debt carrying  
6   costs; is that correct?

7           A    Yes. That's correct.

8           Q    What if the Commission ultimately allowed  
9   the company to expense this -- this program with  
10   short-term debt carrying costs but did not allow it  
11   to put it in plant and service? Would the --  
12   would the company still continue the program?

13          A    May I ask a clarifying question?

14          Q    Sure.

15          A    Are you saying that we would just expense  
16   it or would we put it into some type of deferred  
17   eastbound debit account?

18          Q    Either. Well, I mean, you -- you know,  
19   you would get in rates your costs for the program  
20   plus short-term debts carrying costs, but you would  
21   not get a return on that investment is my  
22   hypothetical.

23          A    Well, certainly, the company would do  
24   whatever the Commission ordered. But I think --  
25   whether or not if that was an offer to the company,

1 I don't know that I'm in a position to accept that  
2 right at this moment.

3 Q Okay. Yeah. That's fair enough. That is  
4 a concept that I would be very interested in  
5 hearing from the company as to whether or not that  
6 was an accounting treatment that it could abide by  
7 and continue the program.

8 Can you tell me a little bit more about  
9 the experience of American Water subsidiaries in  
10 other states on -- in efforts to replace these  
11 customer lead service lines?

12 A I'm actually not knowledgeable about the  
13 programs in the other states.

14 Q Okay. On page 7 of your -- of your  
15 direct, you -- you make the statement that the  
16 replacement of customer-owned lead service line is  
17 similar to the restoration of customer property.

18 A Yes.

19 Q Can you -- can you give me some examples?

20 A Of the other types of restoration?

21 Q Yes.

22 A Yes. Sidewalks, driveways, mailboxes,  
23 yard, paving, things of that nature.

24 Q And so those costs -- those restoration  
25 costs, do they get rolled into plant and service?

1           A    Yes.

2           Q    Did any -- do you have any -- any sense as  
3   to the magnitude of those types of restoration  
4   costs?

5           A    I don't.

6           Q    Can you -- can you explain to me why the  
7   Commission should view these expenses as  
8   extraordinary?

9           A    Well, I think the lead service line  
10   replacement program is extraordinary because this  
11   is an unusual situation with the lead -- lead  
12   issues that are out there. And this is material,  
13   you know, to the company. We discussed the  
14   materiality issue earlier, but those are the two  
15   primary reasons.

16          Q    So you -- you envision this -- this  
17   program were continuing for ten years; is that  
18   correct?

19          A    Yes. That's the current estimate.

20               CHAIRMAN HALL: I have no further  
21   questions. Thank you.

22               MR. LAGRANDE: Okay.

23               COMMISSIONER STOLL: No questions, your  
24   Honor. Thank you.

25               COMMISSIONER KENNEY: I have questions.

1 JUDGE PRIDGIN: Commissioner Kenney?

2 CROSS-EXAMINATION

3 COMMISSIONER KENNEY:

4 Q Thank you. I'd just like to follow up on  
5 a couple of questions Chairman Hall began with.

6 A Uh-huh. Certainly.

7 Q When you -- when you specifically  
8 mentioned would the company consider continuing the  
9 customer replacement line if -- just in layman's  
10 terms, to do it for cost of business and with no --  
11 with no -- no net profit, but just carrying costs  
12 and you said you'd have to -- obviously, kind of  
13 didn't really directly answer that.

14 Does the company have a finite amount of  
15 money that they invests in each year -- invests  
16 each year? Or is it infinite?

17 A Well, I think Mr. Aiton can speak more --  
18 he's more involved with the capital budget and the  
19 capital planning process than I am. So I think he  
20 could give you a more robust answer than I can on  
21 that question.

22 Q I guess my question is I could -- I could  
23 -- I guess my question is why would the company  
24 invest their money if they have a certain amount  
25 that they can invest and it's finite if they're not

1 going to make a return on that investment versus  
2 investing it in something that they know they're  
3 going to get a return on investment? That's just  
4 straight business, right?

5 A Yes.

6 Q And you still can't answer that?

7 A Well, I mean, certainly, the company would  
8 prefer investments where we are, you know, given an  
9 opportunity to earn our full return.

10 COMMISSIONER KENNEY: Thank you.

11 JUDGE PRIDGIN: Bench questions? All  
12 right. Thank you.

13 MS. COLEMAN: No questions.

14 JUDGE PRIDGIN: Cross based on Bench  
15 questions? DED?

16 MR. BEAR: No questions.

17 JUDGE PRIDGIN: Staff?

18 MS. MERS: No questions. Thank you.

19 JUDGE PRIDGIN: MECG?

20 MR. WOODSMALL: Yes. Thank you. Very  
21 briefly.

22 CROSS-EXAMINATION

23 BY MR. WOODSMALL:

24 Q Touching on some questions about the  
25 carrying costs statement that you would like to --



1     you prefer to earn at your full rate of return, do  
2     you recall saying that?

3           A     Yes.

4           Q     And at a full rate of return, there's an  
5     equity component to that, too, isn't there?

6           A     That's correct.

7           Q     And if there's an equity component --  
8     equity component, therefore, an equity return,  
9     there's an income tax factor upon that as well,  
10    isn't there?

11          A     Yes.

12          Q     Okay. So there's a significant monetary  
13    difference between short-term debt costs and a full  
14    rate of return; is that correct?

15          A     Yes.

16          Q     Okay. Turning to page 7 of your direct,  
17    lines 2 and 3, the sentence shall, The replacement  
18    of customer-owned lead service lines is similar to  
19    the restoration of customer property. Do you  
20    recall that?

21          A     Yes.

22          Q     Okay. I believe we established in a data  
23    request, the company admitted that there wasn't a  
24    legal obligation to repay -- replace customer owned  
25    service lines. Do you recall that?

1           A    Are you referring to one of the --

2           Q    **The data requests that Mr. Opitz handed**  
3   **you. Yes.**

4           A    And you're referring to Exhibit 25?

5           Q    **Yes. That's it.**

6           A    Okay. Could you repeat your question,  
7   please?

8           Q    **There's no legal obligation to replace**  
9   **customer-owned service lines; is that correct?**

10          A    Yes. I'm not -- as I said earlier, I'm  
11   not a lawyer, but we do say here there's no --  
12   there's no regulatory or legal requirement that we  
13   replace them.

14          Q    **And, presumably, your attorneys reviewed**  
15   **these data request responses before they were sent**  
16   **out.**

17               MR. COOPER: Objection.

18               MR. WOODSMALL: What's the objection?

19               MR. COOPER: I think it would be protected  
20   by attorney/client privilege what we did or didn't  
21   say in regard to a DR response.

22               MR. WOODSMALL: Okay. Well, never mind.  
23   I'll move on from that.

24          Q    **(By Mr. Woodsmall) Do you know if there's**  
25   **a legal obligation -- let's go back one. You --**

1     you analogize to the replacement of sidewalks,  
2     replacement of grass, things like that when you  
3     talked about it's similar to the restoration of  
4     customer property. Do you know if there's a legal  
5     obligation to replace those things when you work in  
6     the right-of-way?

7           A     Again, I'm not a lawyer, but I don't know  
8     if there is or if there isn't.

9           Q     Okay. So when you say that it's similar,  
10    you really don't know if it's similar from a legal  
11    standpoint?

12          A     Again, as not being a lawyer, yeah, I  
13    don't know.

14          Q     Okay. And there may be legal obligations  
15    to replace and restore customer property when  
16    you're working in the right-of-way?

17          A     Again, I'm not a lawyer, so I don't -- I  
18    don't know if there is or there isn't.

19          MR. WOODSMALL:     Okay. No further  
20    questions. Thank you.

21                 JUDGE PRIDGIN: Thank you. Public  
22    Counsel?

23                 MR. OPITZ: Briefly, Judge.

24                                 CROSS-EXAMINATION

25    BY MR. OPITZ:

1           Q    Mr. LaGrand, a moment ago, the Chairman  
2   asked you a question relating to what makes this  
3   replacement extraordinary. Do you recall that  
4   question?

5           A    Yes.

6           Q    Is there anything in GAAP that requires a  
7   finding of extraordinary before the company can  
8   book anything to Account 186?

9           A    I don't -- I don't know of any.

10          Q    Does anything in GAAP require the company  
11   to receive Commission approval before booking any  
12   costs to Account 186?

13          A    I don't believe so.

14               MR. OPITZ: Okay. Thank you. That's all  
15   the questions I have, Judge.

16               JUDGE PRIDGIN: Thank you. Redirect?

17               MR. COOPER: Yes, your Honor.

18                       REDIRECT EXAMINATION

19   BY MR. COOPER:

20          Q    Working the last question you got there,  
21   Mr. LaGrand, why did the company bring this forward  
22   to the Commission?

23          A    Well, we think this is a very significant  
24   -- yeah. It's a different issue. It's a customer  
25   safety issue. And -- yeah. It's material, you

1 know, and -- and, you know, we wanted to -- we  
2 wanted to get this efficient so we could understand  
3 the proper way that we should -- that we can book  
4 this.

5 Q Let me flip it around. If the Commission  
6 tells you that you can't book it to 186, would you  
7 rather know that sooner rather than later?

8 A Yes, we would.

9 Q Staff started off with a question about  
10 the reference to, I think, short-term projects,  
11 which is in -- let me turn to that. I think it's  
12 in your surrebuttal testimony. Do you remember  
13 that?

14 A Yes. I believe it's on the last page of  
15 surrebuttal.

16 Q Yeah. Would -- would you take a look at  
17 that answer as it begins on page 3 and let me know  
18 what you're referring to when you -- when you refer  
19 to short-term projects?

20 A When I refer to short-term projects on  
21 line 1 of page 4.

22 Q Yes.

23 A A short-term project would be a -- just  
24 one individual project that takes a short amount of  
25 time, maybe under 30 days to complete. And -- and

1 in the context of our lead service line replacement  
2 program, it was describing that as the program in  
3 its entirety as a -- as a longer term project.

4 Q But when you started talking about an  
5 individual replacement, each one of those is an  
6 individual project?

7 A Correct.

8 Q And it's placed into service one by one, I  
9 guess, right?

10 A Yes. That's correct.

11 Q You were asked some questions about  
12 depreciation rates. Is it your understanding that  
13 those are dealt with in a rate case?

14 A Yes. That's correct.

15 Q There was also some reference to, I think,  
16 an account, NARUC Account 345, which is services,  
17 and a reference as to whether that's what upper --  
18 you were speaking of in terms of where these costs  
19 might end up. Do you remember that?

20 A Yes.

21 Q Would -- would Account 343, the mains  
22 account, also be implicated by this process?

23 A Yes. In -- in St. Louis County counsel.

24 Q And why is that?

25 A Well, right now, the restoration costs are

1     booked in Account 343. But in the -- in the rate  
2     case, we do ask to all of the service line  
3     replacements to be captured in 345.

4           Q     You were asked some questions about, I  
5     guess, this ten-year program and the number of  
6     lines per year and did some multiplication as I  
7     recall.

8                   Is it your understanding that this  
9     application -- what time period is it that you  
10    understand this application concerns?

11          A     Yeah. So this application concerns a  
12    period from January 1st of 2017 through May 31st,  
13    2018. Not the full ten years.

14          Q     You were pointed to, oh, a number that was  
15    represented to be the amount of dollars, as I  
16    understand it, and -- and one of the utility plan  
17    accounts? Do you remember that? Mr. Opitz asked  
18    you about that.

19          A     Yes.

20          Q     And you did a comparison. I guess I'm  
21    curious. Would depreciation be working the other  
22    direction as well when you're thinking -- when  
23    you're working with a plant account? Or am I  
24    mixing apples and oranges here?

25          A     Could you maybe restate the question?

1           Q    Yeah. I think it -- you were asked a  
2   question about dollars that are currently booked to  
3   -- I don't remember -- do you remember which  
4   account it was?

5           A    Yeah. 345.

6           Q    345. So if you made no further  
7   investment over the next five years -- I know  
8   that's almost impossible. But if you made no  
9   further investment over the next five years, what  
10   would you expect the dollars -- would the dollars  
11   in that account change because of depreciation?  
12   Would they be offset by depreciation?

13          A    Yeah. If -- if there was -- if there was  
14   no further investment, the dollars in 345 wouldn't  
15   stay constant. But the depreciation balance would  
16   increase. And the net would decrease over time.  
17   Except if there were retirements. That would --  
18   retirements would reduce the assets account.

19          Q    You were asked some questions about, you  
20   know, what about -- questions about return on and  
21   return of, that sort of thing, or the absence of a  
22   return on.

23                Are you -- well, on a going forward basis,  
24   where would that -- that question be answered?

25          A    That would be determined as part of the



1 current rate case.

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

4 JUDGE PRIDGIN: Mr. Cooper, thank you.  
5 Mr. LaGrand, thank you very much. You may step  
6 down. And I believe the next witness is Mr. Aiton.  
7 Come forward to be sworn, please, sir. You'll  
8 raise your right hand to be sworn, please.

9 BRUCE AITON,  
10 being first duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. COOPER:

14 JUDGE PRIDGIN: Thank you, sir. You may  
15 have a seat. Mr. Cooper, when you're ready, sir.

16 Q (By Mr. Cooper) Please state your name.

17 A My name is Bruce Aiton, A-i-t-o-n.

18 Q By whom are you employed and in what  
19 capacity?

20 A Employed by Missouri-American Water. I'm  
21 the Director of Engineering.

22 Q Have you caused to be prepared for the  
23 purposes of this proceeding certain direct,  
24 rebuttal and surrebuttal testimony in question and  
25 answer form?

1           A    Yes.

2           Q    Is it your understanding that testimony  
3   has been marked Exhibits 7, 8 and 9 for  
4   identification?

5           A    Yes.

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

8           A    No, sir.

9           Q    If I were to ask you the questions which  
10   are contained in Exhibit 7, 8 and 9 today, would  
11   your answers be the same?

12          A    Yes.

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

15          A    Yes.

16               MR. COOPER:  Your Honor, I would offer  
17   Exhibits 7, 8 and 9 into evidence and tender  
18   Mr. Aiton for cross-examination.

19               JUDGE PRIDGIN:  Any objections?  Hearing  
20   none, Exhibits 7, 8 and 9 are admitted.

21               (Exhibits 7, 8 and 9 were offered and  
22   admitted into evidence.)

23               JUDGE PRIDGIN:  Cross-examination, DED?

24               MR. BEAR:  A few questions.

25                               CROSS-EXAMINATION

1 BY MR. BEAR:

2 Q Sir, on page 10 of your direct testimony,  
3 you refer to the company's proposal as presenting  
4 some leverage for economies of scale. Do you  
5 recall stating that, sir?

6 A If I can look at it.

7 Q Sure. I'm looking specifically on lines  
8 19 and 20.

9 A Yes.

10 Q So one of the advantages of doing customer  
11 line replacements while the main line is being  
12 worked on is that there are some cost advantages;  
13 is that correct?

14 A Yes.

15 Q For instance, the ground is already  
16 trenched, you don't have to -- you've already  
17 exposed the pipe, correct?

18 A That's correct.

19 Q And so when you're given a range in  
20 response on line 6 and 7 of 3,000 to 5,500 for  
21 replacement, that's actually a cost advantaged  
22 amount for the -- for the project, for the line,  
23 correct?

24 A Yes.

25 Q It would be more expensive, for instance,

1 the company had to hire out a lead line  
2 replacements on their on without -- without that  
3 existing work already occurring, correct?

4 A I believe that's accurate correct.

5 Q Do you have a sense of how much more  
6 expensive it would be for the customer in order to  
7 do a single lead line replacement?

8 A There would be a lot of variation. But it  
9 would probably -- it would depend on the location.

10 Q Okay. But -- but based on your knowledge  
11 and experience, you're confident that the customer  
12 would likely have to pay somewhere significantly  
13 more?

14 A Somewhere in a third more or - I'd have to  
15 say double more.

16 Q As far as the mechanics of the  
17 replacement, do you utilize different contractors  
18 or the same contractors that's doing the main line  
19 replacement to carry out the customer line  
20 replacements as well?

21 A The answer to that is it depends. In St.  
22 Louis County, there's a requirement that it be a  
23 licensed lumber, so we subcontract that work out to  
24 a different person than would be typically be  
25 laying the mains, which are typically our own

1 crews. Other districts across the state,  
2 oftentimes, we do that work with our own crews as  
3 well.

4 Q But, ultimately, the company is deciding  
5 which contractor to select, correct?

6 A That's correct.

7 Q And the company has -- would it be fair to  
8 say the company has some sophistication in  
9 selecting reputable contractors that follow through  
10 on this type of work?

11 A Yes.

12 Q And have specialty in the field, correct?

13 A Yes.

14 Q And that oftentimes that type of knowledge  
15 and experience in selecting contractors may not be  
16 available to an average homeowner trying to find  
17 this for themselves, correct?

18 A It could be more of a challenge. That's  
19 correct.

20 Q If there were a situation where a  
21 contractor who was replacing customer lines --  
22 customer service lines was found to do work in a  
23 non-workmanlike manner, would the company consider  
24 that a breach of contract for that contractor?

25 A Yes.

1           Q    And the company would have significant  
2   financial leverage over that contractor to ensure  
3   proper service, correct?

4           A    That's correct.

5           Q    Much more so than just an average plumber?

6           A    We were performing some payment bonds and  
7   a variety of things that give us that leverage.  
8   Yes.  Certificates of insurance that oftentimes  
9   homeowners don't secure.

10          Q    It was suggested -- were you here during  
11   the opening statements?

12          A    Yes.

13          Q    On one of the opening statements, it was  
14   suggested that perhaps -- or implied at least  
15   perhaps that the replacement costs for customer  
16   line scales would be relative to expensiveness of  
17   the property.  Do you recall that?

18          A    I -- I recall there was a lot of  
19   discussion around the expense of the individual  
20   properties, but -- but not that was necessarily  
21   related directly to the cost of those services.

22          Q    Isn't it true that the value of the house  
23   doesn't really have a lot to do necessarily with  
24   the expenses required to replace a lead line?

25          A    That's correct.

1           Q    In fact, as you say in your testimony what  
2 actually drives up the cost are things like rocks  
3 and trees in the way, correct?

4           A    That's correct.

5           Q    And that has nothing to do with how much  
6 someone's house is appraised at?

7           A    That's correct

8           MR. BEAR: Thank you. No nothing further.

9           JUDGE PRIDGIN: Thank you. Staff?

10          Q    Good afternoon. At this time, do you know  
11 how many customers have refused to have their lead  
12 service line replaced?

13          A    Two.

14                                   CROSS-EXAMINATION

15 BY MS. MERS:

16          Q    Two. Okay. And, Mr. Aiton, you have  
17 estimates for about 30,000 lead service lines and  
18 estimated costs on average to replace and the  
19 amount of replacements in your testimony.

20               And that's kind of based -- I'm getting  
21 the impression, from a practical boots on the  
22 ground experience that your employees have just  
23 encountered in the field, correct?

24          A    It's a combination of -- of referencing  
25 and -- and reviewing the data that we do have

1 available from tap cards.

2 A tap card is a historic record of that  
3 service line tap when it was made. And, also, in  
4 other locations where we don't have those records  
5 for those boots on ground and their anecdotal  
6 knowledge of the system.

7 Q Are you familiar with the rebuttal  
8 testimony of OPC witness Dr. Marke?

9 A Yes.

10 Q Are you familiar with the AWWA article he  
11 references?

12 A Yes.

13 Q Is it -- do you understand that is a  
14 national survey to extrapolate the data to come up  
15 with an estimate for the entire state and not just  
16 Missouri-American's territory?

17 A Yes.

18 MS. MERS: Thank you. I have no further  
19 questions.

20 JUDGE PRIDGIN: Ms. Mers, thank you.  
21 MECG?

22 MR. WOODSMALL: Yes, your Honor.

23 CROSS-EXAMINATION

24 BY MR. WOODSMALL:

25 Q Going to some questions Mr. Bear asked



1     you, would you agree Staff included, I guess, 71  
2     invoices in Mr. Merciel's rebuttal. Do you recall  
3     that?

4           A     Yes.

5           Q     And if 57 of those were in Clayton, would  
6     you accept that subject to check?

7           A     Yes.

8           Q     Okay. Would you agree that the average  
9     cost for those in 57 in Clayton were -- was  
10    approximately \$9900?

11          A     I -- subject to verification, I would say  
12    that's probably in the right range, yes.

13          Q     Okay. And would you agree that that is  
14    approximately seven times larger than the price in  
15    Mexico, Missouri?

16          A     What was the pricing in Mexico, Missouri?

17          Q     \$1440.

18          A     Sure.

19                THE COURT REPORTER: Can we go off the  
20    record for a minute, please?

21                JUDGE PRIDGIN: Okay. Let's -- I'm sorry.  
22    Let's go off the record.

23                (Break in proceedings.)

24                JUDGE PRIDGIN: I'm sorry. Mr. Woodsmall,  
25    when you're ready.

1 MR. WOODSMALL: Not a problem. I'll  
2 backtrack for a little bit for the clarity of the  
3 record.

4 Q (By Mr. Woodsmall) We were talking about  
5 the magnitude of the contractor invoices that were  
6 in Staff's rebuttal. Do you recall that?

7 A Yes.

8 Q And rather than use comparisons, would you  
9 accept, subject to check, that the average cost for  
10 the 57 homes in Clayton was 9865?

11 A Yes.

12 Q Okay. And for Mexico, Missouri, \$1,440?

13 A Yes.

14 Q And for Jefferson City, \$2,545?

15 A Yes.

16 Q And, finally, for St. Joseph, \$4,113?

17 A Yes.

18 Q Okay. And those costs will be, the phrase  
19 was used earlier, uplifted, is that correct, under  
20 your proposal?

21 A I'm not familiar with that term.

22 Q Socialized, passed on to the other  
23 customers?

24 A It would be spread through the -- if --  
25 depending on how the Commission rules in the rate

1 case, that's how it will be dealt with.

2 Q Okay. And so the -- the homeowner in  
3 Clayton is uplifting seven times as much for his  
4 service line replacement as the homeowner in  
5 Mexico; is that correct?

6 A That would be the difference in cost.

7 Q Okay. Are you a Missouri-American  
8 customer?

9 A I am.

10 Q And you own your own home; is that  
11 correct?

12 A I do.

13 Q When you bought your home, let's say,  
14 hypothetically, that you need a service line  
15 replacement because it's lead. When you bought  
16 your home, did you expect that the utility would  
17 replace that for you?

18 A I actually check that before I buy homes.  
19 But --

20 Q And would you have expected -- if you'd  
21 bought the home, would you have expected someone  
22 else to pay that for you?

23 A Typically, no.

24 MR. WOODSMALL: Okay. I have no further  
25 questions. Thank you.

1 JUDGE PRIDGIN: Thank you, Public Counsel?

2 MR. OPITZ: Yes, Judge. Similar situation  
3 with the data requests. May I approach?

4 JUDGE PRIDGIN: You may. The next exhibit  
5 will be No. 27.

6 MR. OPITZ: 27 will be DR-15.2.

7 JUDGE PRIDGIN: Exhibit 27 is OPC  
8 DR-0015.2.

9 MR. OPITZ: 28 will be 0028.

10 JUDGE PRIDGIN: 29 will be DR-2008.

11 MR. OPITZ: 30 will be DR-2010. And 31  
12 will be DR 2017. May I proceed, Judge?

13 JUDGE PRIDGIN: You may.

14 CROSS-EXAMINATION

15 BY MR. OPITZ:

16 Q Mr. Aiton, you're aware that Public  
17 Counsel sent some data requests to the company; is  
18 that correct?

19 A That's correct.

20 Q And you prepared some of the responses to  
21 those; is that correct?

22 A It is correct.

23 Q If I could have you take a look at DR --  
24 or I should say Exhibit 27, which is DR-0015.2.

25 A Okay.

1           Q    And you prepared the response to this data  
2   request; is that correct?

3           A    I believe so.

4           Q    And this is a true and accurate copy of  
5   the response to that data request?

6           A    To the best of my memory, yes.

7           Q    Prior to 2017, the company didn't have a  
8   notification process when it discovered that a  
9   customer had a lead service line; is that correct?

10          A    That's correct.

11          Q    And prior to January of 2017, the company  
12   was doing partial lead service replacements; is  
13   that correct?

14          A    We were replacing that portion of the main  
15   that was either in the street or to the curb line  
16   when we replaced the service line.  Yes.

17          Q    And so that would be --

18          A    A partial.  Yeah.

19          Q    What's been called partial?

20          A    Correct.

21          Q    And you agree that the company has been  
22   replacing its mains for a hundred years; is that  
23   correct?

24          A    Not in --

25          Q    Give or take?

1           A    Yes.  I'm not sure exactly when the formal  
2   main replacement process would have -- would have  
3   initiated, but, yes, for a long time.

4           Q    Okay.

5           MR. OPITZ:  Judge, I move Exhibit 27 into  
6   evidence.

7           JUDGE PRIDGIN:  Any objections?  Hearing  
8   none, Exhibit 27 is admitted.

9           (Exhibit 27 was offered and admitted into  
10   evidence.)

11          Q    (By Mr. Opitz)  Mr. Aiton, would you take  
12   a look at Exhibit 28, which is DR-0025 -- or 0028,  
13   I believe.

14          A    Yes.

15          Q    Did you provide the response to this data  
16   request?

17          A    Yes.

18          Q    And is this a true and accurate copy of  
19   the response you provided?

20          A    Yes.

21          Q    Would you agree that the company has had  
22   customers refuse fuse replacement of their lead  
23   service lines, correct?

24          A    Yes.  The two that we mentioned earlier.

25          Q    So since the data response was provided,

1 no other customers have refused?

2 A That's right.

3 Q You would agree that the company has no  
4 future plan to inform owners at that location that  
5 they have a lead service line?

6 A If people inquire, we'll tell them. But  
7 we -- we've noted on the historic record, the tap  
8 cards, basically, that those are still lead -- lead  
9 service lines.

10 But we don't have any other notification  
11 requirement. When people buy homes, we don't have  
12 notification necessarily when people buy or sell  
13 homes.

14 Q So if -- if -- just so I understand, if  
15 any customer inquires, you'll tell them? Or if one  
16 of those two customers inquires, you'll tell them?

17 A If any customer calls right now, we'll  
18 refer them to a plumber, tell them to verify  
19 because we don't know with what the tap card  
20 records are, but we refer them to a plumber to  
21 confirm what the service line is.

22 Q Okay. To follow up on that, if the  
23 customer inquires and you do have a tap card, at  
24 the same time you refer them to a plumber, will you  
25 inform the customer that your tap card shows that

1       **there is a lead service line?**

2           A     Yes.

3           **Q     Okay.**

4           MR. OPITZ: Judge, at this time, I would  
5     move Exhibit 28 into evidence.

6           JUDGE PRIDGIN: Any objections? Hearing  
7     none, Exhibit 28 is admitted.

8           (Exhibit 28 was offered and admitted into  
9     evidence.)

10          **Q     (By Mr. Opitz) Mr. Aiton, could I direct**  
11     **your attention to Exhibit 29, which is DR-2008**

12          A     Yes.

13          **Q     And you provided the response -- company's**  
14     **response to this data request?**

15          A     Yes.

16          **Q     And is this a true and accurate copy of**  
17     **that response?**

18          A     Yes.

19          **Q     You would agree that the lead and copper**  
20     **-- lead and copper rule does not require**  
21     **replacement of non-company owned service lines?**

22          A     That's correct.

23          MR. OPITZ: Judge, at this time, I would  
24     move Exhibit 29 into evidence.

25          JUDGE PRIDGIN: Any objections? Hearing



1 none, Exhibit 29 is admitted.

2 (Exhibit 29 was offered and admitted into  
3 evidence.)

4 Q (By Mr. Opitz) Mr. Aiton, could I direct  
5 your attention to Exhibit 30, which is DR 2010?

6 A Okay.

7 Q And you provided the response -- the  
8 company's response to this data request?

9 A Yes.

10 Q And would you agree this is a true and  
11 accurate copy of that response?

12 A Yes.

13 Q Would you agree that the company is in  
14 compliance with the lead and copper rule without  
15 replacing any portion of the customer-owned service  
16 lines?

17 A Currently, yes.

18 MR. OPITZ: Judge, at this time, I'd move  
19 Exhibit 30 into evidence.

20 JUDGE PRIDGIN: Any objections? No  
21 objections, Exhibit 30 is admitted.

22 (Exhibit 30 was offered and admitted into  
23 evidence.).

24 Q (By Mr. Opitz) Mr. Aiton -- Aiton, if  
25 you could look at Exhibit 31, please, which is

1 DR-2017.

2 A Okay.

3 Q Would you agree that you provided the  
4 company's response to this data request?

5 A Yes.

6 Q And is this a true and accurate copy of  
7 the company's response?

8 A Yes.

9 Q You agree that the company is not giving  
10 priority to projects based on economic constraints  
11 of homeowners at -- at present?

12 A That's correct.

13 Q And would you agree that the company has  
14 no plans to give priority to projects based on the  
15 economic restraints of homeowners?

16 A That's correct.

17 MR. OPITZ: Judge, at this time, I'd move  
18 into evidence Exhibit 31.

19 JUDGE PRIDGIN: 31 has been offered. Any  
20 objections? Hearing none, Exhibit 31 is admitted.

21 (Exhibit 31 was offered and admitted into  
22 evidence.)

23 Q (By Mr. Opitz) Mr. Aiton, are you  
24 involved with the decision-making on -- on treating  
25 water that -- at Missouri American?

1           A    To some extent, yes.

2           Q    If the company's Petition is granted, does  
3   it plan to stop treating its water?

4           A    No.

5           Q    Can you envision a scenario where  
6   Missouri-American would go for months without  
7   treating its water?

8           A    No.

9           Q    And, lastly, Mr. Aiton, are you a  
10   Certified Public Accountant?

11          A    No, sir.

12               MR. OPITZ: Thank you. That's all I have.

13               JUDGE PRIDGIN: Mr. Opitz, thank you. Any  
14   Bench questions? Mr. Chairman?

15               CHAIRMAN HALL: No questions. Thank you.

16               JUDGE PRIDGIN: Commissioner Kenney?

17               COMMISSIONER KENNEY: Thank you.

18                       CROSS-EXAMINATION

19   BY COMMISSIONER KENNEY:

20          Q    Good afternoon. How are you?

21          A    Good.

22          Q    I had a question when you were talking in  
23   your rebuttal or -- yeah -- your rebuttal, and you  
24   had mentioned that on this -- I think you did in  
25   your direct, too, on the company's -- that the

1     systems that have been acquires where you don't  
2     have tap cards. So you don't know what -- what --  
3     what is there. Do you -- you do your best  
4     practices or best effort practices to determine --  
5     I guess my question is, in those areas where you're  
6     doing replacement of main line, how -- how do you  
7     determine -- when do you determine whether a  
8     service line, a customer service line, needs to be  
9     replaced?

10        A     So two -- two parts. The way we -- maybe  
11     just to give you the full answer. The way we came  
12     up with the estimated number is we talked to the  
13     field operation staff that may have been in that  
14     city and, in particular, I'll use Mexico as an  
15     example.

16                We acquired the system in the City of  
17     Mexico. We have operations staff that have worked  
18     there for 30-plus years.

19                Where we don't have tap cords cards, we  
20     ask them, What areas of town do you recall having  
21     seen or as you dug up leaks or whatever, that have  
22     lead -- lead service lines.

23                And they said, Well, we think this area.  
24     And we came up with a number, and that's what got  
25     rolled into that 30,000. When we're replacing

1 mains currently in those areas in particular where  
2 we don't know, and even in the areas where we have  
3 good records, we're going ahead of that main  
4 replacement and potholing or digging a small hole  
5 to determine whether the service line is lead or  
6 not because we've had both directions.

7 We've had locations that said that they  
8 were lead and others when we dug them up they  
9 weren't because somebody else had replaced it  
10 previously.

11 And, conversely, ones that we didn't think  
12 were lead that ended up being lead. But we  
13 actually pothole and do that field investigation.

14 **Q So many of your systems do you know ahead**  
15 **of time, every house in this block is lead -- I**  
16 **mean, 90 percent?**

17 A We have a probability.

18 **Q Probability?**

19 A Yeah. Yeah.

20 **Q On this sheet that I think your attorney**  
21 **handed out, outside of St. Louis County, the meters**  
22 **are --**

23 A Effective curb, roughly.

24 **Q Meters out to here?**

25 A Correct.

1           Q   Property line may be here. Are they at  
2   the -- at the tap, or how --

3           A   No. They're -- at -- in the top graph?

4           Q   The bottom one on -- within St. Louis  
5   County.

6           A   Typically, no. The meters are either in  
7   house or in the -- in the -- at -- to me, we have  
8   actually at the same place. But that really is  
9   indicated we don't own any portion of the service  
10   line or even the tap in that -- in St. Louis  
11   County.

12          Q   Okay. So what -- so in St. Louis County,  
13   your -- your service lines, would they, on average,  
14   be longer than outside the County or --

15          A   Not necessarily so.

16          Q   Shorter setbacks?

17          A   Again, it would depend on the area of  
18   town. There's a lot of variation in St. Louis  
19   County. But of the 400,000 customers, most of them  
20   are in St. Louis County. 300-plus thousand.

21          Q   Do you -- and you pay prevailing wage to  
22   your subcontractors?

23          A   In St. Louis County, we do.

24          Q   Not anywhere else?

25          A   It depends on the locality. We have an

1 agreement with the Laborers Union for all pipe  
2 replacement in St. Louis County.

3 Q Because I found it kind of interesting.  
4 You said that the homeowner would have to pay  
5 double what your contractor -- you can pay your  
6 contractor to put a service line a house in St.  
7 Louis County, which I would find -- as a former --  
8 being in that industry, I don't understand that.  
9 Because most homes aren't built with prevailing  
10 wage.

11 A That's correct. But the one-off where  
12 they have to come and mobilize as a one-off  
13 location. And something I experienced, my personal  
14 experience on a wastewater line on a home that I  
15 owned, what I knew I could replace it for as part  
16 of company versus what it cost me to replace it as  
17 a private homeowner was substantially more.

18 Q Well, on your one situation.

19 A Yeah.

20 Q I could probably name several situations  
21 where it probably wasn't for me.

22 A That's -- that's equally right. Yes.

23 Q But you're not an expert in that field,  
24 are you?

25 A Not in what it costs individual homeowners

1 to replace --

2 Q For a homeowner to put in the line?

3 A Correct.

4 Q Yeah. All right. Now, so when you hire a  
5 contractor -- or now the company hires a contractor  
6 to put in these service lines, does that contractor  
7 the one that contacts the homeowner, or does the  
8 company contact the homeowner?

9 A Well, we do the initial contact with the  
10 homeowner.

11 Q And what do you -- what are you -- what do  
12 you tell the homeowner? What are you offering  
13 them?

14 A Well, we have actually --

15 Q I saw -- I just want a brief --

16 A Okay. Yeah. And the outline is we let  
17 them know that they have a lead service line.  
18 We're not process of replacing the main in the  
19 street and we think best practice is to replace  
20 that service line as part of project and we'd like  
21 their permission to come on their property and do  
22 that. Part of that communication, then, is also  
23 the flushing and the sampling that follows that.

24 Q Do you have to get an easement?

25 A We do not. Right.



1 Q Did you obtain an easement?

2 A We do not.

3 Q Did you obtain a contract for the pipe  
4 that's out in their ground?

5 A We do not. We only have the -- the right  
6 of access that we -- that they've given us.

7 Q So they give you a right of access to put  
8 the pipe on their property?

9 A Correct.

10 Q So who owns that pipe now?

11 A As far as we're concerned, they still own  
12 that pipe.

13 Q So then it's not plant and service, right?

14 A Not currently. Again, that -- that would  
15 be the determination in the rate case.

16 Q But, I mean, if it's not -- if you don't  
17 own it, how can you claim it as plant in service?

18 A That's one of the reasons we're here to  
19 discuss that and get some indication from the  
20 Commission.

21 Q But -- okay. Well, that didn't answer my  
22 question.

23 A Or sorry.

24 Q Because that's one of the things, I  
25 understand. But if you don't have a contract or

1     you don't have an easement and you don't have  
2     anything and it's not on your property, it's their  
3     pipe.

4           A     That's correct.

5           Q     Okay. All right. You also mentioned the  
6     fact that you have -- you have bonding capability.  
7     Don't plumbers within St. Louis County have to be  
8     -- carry general liability insurance and Workers'  
9     Comp.?

10          A     Yes.

11          Q     Okay. So the fact that you have bonding  
12     doesn't really make a difference. They have to  
13     have that anyway, right?

14          A     Well, now --

15          Q     Most --

16          A     In only terms of re -- if somebody fails  
17     to perform and gives us additional leverage against  
18     that contract.

19          Q     So do you guarantee their work? Do you  
20     guarantee their work?

21          A     When.

22          Q     Does Missouri-American guarantee their  
23     contractors' work?

24          A     We would be the ones responsible to fix it  
25     if it went badly. Yes.

1 Q So you would take care of it?

2 A Yes.

3 Q Even if you hire a contractor, he -- if he  
4 disappears, would your company have to take care of  
5 that service line that the customer owns?

6 A First -- first line of defense, would be  
7 we'd go back to that contractor and have him fix  
8 it? yes.

9 Q And if he disappeared?

10 A We're responsible to our customers.

11 COMMISSIONER KENNEY: Okay.

12 JUDGE PRIDGIN: Thank you. Further Bench  
13 questions? Cross based on Bench questions? DED,  
14 any questions?

15 MR. BEAR: No question.

16 JUDGE PRIDGIN: Staff?

17 MS. MERS: No questions.

18 JUDGE PRIDGIN: MECG?

19 MR. WOODSMALL: Yes, your Honor.

20 CROSS-EXAMINATION

21 BY MR. WOODSMALL:

22 Q Questions from Commissioner Kenney, in one  
23 of those, you talked about 400,000 customers,  
24 300,000 of which were in St. Louis County. Do you  
25 know how many total of your -- how many of your

1 total customers are residential customers?

2 A I do not.

3 Q Okay. Now, working backwards, you talked  
4 about if there is a problem the company is  
5 ultimately responsible to fix that; is that  
6 correct?

7 A In that particular case, yes.

8 Q Okay. Let's say the contractor has gone  
9 out of business, disappeared. There is a cost to  
10 you to fix that line; is that correct?

11 A There potentially could be.

12 Q Who would pick up that cost to fix that  
13 line?

14 A In that case, it would depend. But it  
15 would probably just go through the company.

16 Q Okay. So you're not -- you would not be  
17 looking to re -- incur or pass that cost through to  
18 ratepayers?

19 A I don't believe, at lease in that  
20 particular case.

21 Q Okay. Just so I understand the -- the  
22 progression, how the conversation goes, you make a  
23 determination whether it's through potholing, your  
24 tap cards or whatever that John Doe, you're likely  
25 to have lead service line. You then go up to the

1 door, communicate with them in some fashion and  
2 say, We believe you have a lead service line.  
3 We're going to replace the mains. Would you like  
4 your service line replaced; is that correct?

5 A Generally, yes.

6 Q Okay. Customer typically asks, How much  
7 is it going to cost me?

8 A I'm not in those conversations.

9 Q So you don't know?

10 A No.

11 Q Okay. Do you know if the company has told  
12 these customers, no, there's no cost to you?

13 A Yes.

14 Q You have told them there's no cost to  
15 them?

16 A Correct.

17 Q So if the Commission then -- you made that  
18 determination on your own. So if the Commission  
19 determines that you don't get the AAO, the company  
20 is then eating the cost of the service line  
21 replacements that's done to date; is that correct?

22 A That's a potential risk, yes.

23 Q Okay. Now, going back -- we were talking  
24 about potholing, tap cards, going back to some  
25 questions from Mr. Bear and working this, Mr. Bear

1 was suggesting that there are efficiencies that  
2 while you're trenching, it's cheaper to replace  
3 their service line while you're there in the area;  
4 is that correct?

5 A Yes.

6 Q Okay. If -- if you know weeks in advance  
7 because of the tap cards and -- or potholing --

8 MR. COOPER: Your Honor, I have an  
9 objection, I think, at this point. We're not  
10 circling back around to original cross questions,  
11 are we?

12 MR. PRIDGIN: Aren't we on just re-cross  
13 based upon questions from the Bench?

14 MR. WOODSMALL: And -- and I'm not doing  
15 that.

16 Q (By Mr. Woodsmall) I'm -- I made a  
17 reference to that, but I'm talking about the  
18 questions from Commissioner Kenney about potholing.  
19 So when you -- when you pothole or look at the tap  
20 cards, you know sometimes in advance of the time  
21 that you're going to replace the service line; is  
22 that correct?

23 A Yes. We have some indication from the tap  
24 cards. But then we confirm or -- what the actual  
25 field indications are through potholing.

1           Q   And could that be weeks in advance of your  
2   work?

3           A   Sometimes less. It depends -- it depends  
4   on the particular thing, on the particulars.

5           Q   Okay. So if the customer was held  
6   responsible for doing their own service line  
7   replacements because they know in advance, they  
8   could coordinate that to do that while you're  
9   trenching; is that correct?

10          A   In theory, yes.

11          Q   Okay. So the company -- the customer  
12   could still gain the efficiencies of doing it at  
13   the same time without the company being responsible  
14   for the costs; is that correct?

15          A   If they have the resources to do that.

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

18               JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
19   Public Counsel?

20               MR. OPITZ: No, thank you, Judge.

21               JUDGE PRIDGIN: Redirect?

22               MR. COOPER: Yes, your Honor.

23                       REDIRECT EXAMINATION

24   BY MR. COOPER:

25          Q   Mr. Aiton, you were asked some questions

1     **about the invoices from customer lead service line**  
2     **replacement in Clayton. Do you remember that?**

3           A     Yes, sir.

4           Q     **Just kind of as an initial question, why**  
5     **were you doing a project in Clayton?**

6           A     The --

7           Q     **Or projects, I guess.**

8           A     The -- the first half of the year,  
9     generally, in -- particularly in St. Louis County,  
10    we coordinate with the various municipalities with  
11    road projects that they are on. And we do pipe  
12    replacements in those -- in conjunction with the  
13    road projects that the municipalities are doing.  
14    In those projects in Clayton, they were replacing  
15    the road, so we went in to replace the main at the  
16    same time.

17          Q     **And then you have a -- another**  
18    **prioritization process for main replacements,**  
19    **correct?**

20          A     Correct. Yeah. The balance of the year  
21    or the balance of the pipes that are replaced are  
22    done either by -- by breaks in the line or leaks a  
23    in the line, pipe condition, pipe age. Looking at  
24    the one on the table there, it's pretty corroded,  
25    so --



1           Q   And they may -- they take you where they  
2   take you once you do that prioritization; is that  
3   correct?

4           A   Correct.  Yes.

5           Q   And I think Commissioner Kenney had asked  
6   you a question about whether the lines were  
7   customer -- or the service lines were longer in  
8   St. Louis county versus outside St. Louis County.  
9   Do you remember that?

10          A   Yes, sir.

11          Q   There is a difference, however, in the  
12   portion of the line that we describe as  
13   customer-owned service line, correct?

14          A   Yes.

15          Q   So all else being equal, if you have the  
16   same length, conditions, everything else, and you  
17   have a -- a service line in St. Louis County, and  
18   you have a service line outside of St. Louis County  
19   where the company actually owns a piece of that,  
20   would you expect the St. Louis County piece to be  
21   more expensive?

22          A   No.  I --

23          Q   Or I'm sorry.  The -- the amount  
24   associated with the customer-owned portion to be  
25   more expensive?

1           A    Yeah.  The -- the -- the overall length of  
2   the customer-owned side would be shorter outside of  
3   St. Louis County because we own a portion from the  
4   curb to the pipe.  In St. Louis County, the entire  
5   portion would be customer-owned.

6           Q    You mentioned in response to a question  
7   from Mr. Woodsmall that you check for lead lines  
8   yourself before you buy your home.  Why do you do  
9   that?

10          A    Abundance of caution.

11          Q    Do you want a home that has a lead service  
12   line?

13          A    No.  The one that I mentioned to him,  
14   also, to check the sewer lines, so --

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

17               JUDGE PRIDGIN:  Mr. Cooper, thank you.  
18   Mr. Aiton, thank you very much.  You may step down.  
19   This looks to be an opportune time to take a break.

20               And before we do that, I understood that  
21   there may be some dispute between Missouri-American  
22   and Public Counsel on the order of cross and DED.

23               I guess when we come back from the break,  
24   I'll ask if they I still have that dispute, and so  
25   I will rule accordingly.  Anything further before

1 we take a break? If nothing else, we will stand in  
2 recess until 3:15. Thank you. We're off the  
3 record.

4 (Break in proceedings.)

5 JUDGE PRIDGIN: Good afternoon. We're  
6 back on the record. Mr. Hyman is on the stand.  
7 I'll swear him in momentarily. Did I understand  
8 that -- that Public Counsel and Missouri-American  
9 had a difference of opinion on the order of cross  
10 for this witness?

11 MR. WOODSMALL: I'll -- I can try and  
12 tackle that. It was a minor thing having to do  
13 with order of cross. I talked to Mr. Cooper. My  
14 amount of cross for Mr. Hyman is so short that it's  
15 not worth dealing with, so, no, I don't think we  
16 have a problem.

17 MR. OPITZ: I've got no issue then either.

18 JUDGE PRIDGIN: Okay. So does it -- does  
19 it not matter?

20 MR. WOODSMALL: Doesn't matter. If you  
21 want to -- whichever order you want to use.

22 JUDGE PRIDGIN: Okay. Because I was just  
23 glancing over them. To me, it looks like the least  
24 adverse to the most adverse is the order of cross,  
25 that -- that Public Counsel and the like --

1 Missouri-American going first, then Staff, MEEG and  
2 then Public Counsel.

3 MR. COOPER: I'm fine with that, your  
4 Honor.

5 JUDGE PRIDGIN: All right. Anything  
6 further before Mr. Hyman is sworn? All right.  
7 Mr. Hyman, if you'll raise your right hand to be  
8 sworn, please.

9 MARTIN HYMAN,  
10 being first duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BEAR:

14 JUDGE PRIDGIN: Thank you, sir. You may  
15 have a seat. Mr. Bear, when you're ready, sir.

16 Q (By Mr. Bear) Would you state your name  
17 for the record?

18 A Yes. Martin R. Hyman.

19 Q And how are you employed, sir?

20 A I'm employed as a Planner III within the  
21 Missouri Department of Economic Development,  
22 Division of Energy.

23 Q And did you cause to be filed in this case  
24 today rebuttal testimony regarding issues in the  
25 case?

1           A    I did.

2           Q    And that testimony contains questions and  
3   answers, correct?

4           A    Yes.

5           Q    And those would be your questions and  
6   answers if I were to ask them to you today?

7           A    Yes, sir.

8           Q    Do you have any corrections you need to  
9   make?

10          A    No, sir.

11               MR. BEAR:  I'd move at this time that  
12   Mr. Hyman's testimony be admitted into the record.

13               JUDGE PRIDGIN:  And I show that as Exhibit  
14   10.  And Exhibit 10 has been offered.  Any  
15   objections?  Hearing none, Exhibit 10 is admitted.

16               (Exhibit 10 was offered and admitted into  
17   evidence.)

18               MR. BEAR:  I tender the witness.

19               JUDGE PRIDGIN:  Mr. Bear, thank you.  
20   Cross-examination, Missouri-American?

21               MR. COOPER:  No, thank you, your Honor.

22               JUDGE PRIDGIN:  Staff?

23               MS. ASLIN:  Just a few questions.

24                               CROSS-EXAMINATION

25   BY MS. ASLIN:

1           Q    Mr. Hyman, do you have your testimony in  
2   front of you?

3           A    I do.

4           Q    I'd like you to turn to page 6 of your  
5   rebuttal, please.

6           A    Okay. Okay. I'm there.

7           Q    And on that page, you reference Missouri  
8   Statute 393.130.1, and you emphasize the portion of  
9   that statute that says, Every water corporation  
10   shall furnish and provide such service  
11   instrumentalities and facilities shall be safe and  
12   adequate. Is that correct?

13          A    Yes. That's lines 3 through 4.

14          Q    Yes. And even without Missouri-American's  
15   lead -- lead service line replacement program,  
16   would you consider that requirement to be met by  
17   the company?

18          A    I think that depends.

19          Q    And would you consider -- the requirement  
20   of safe and adequate service, would you consider  
21   that to be a base on the actions of the company, or  
22   would you consider that to be limiting their  
23   actions?

24          A    I guess I'm not quite sure I understand  
25   the question.

1           **Q**    I'll rephrase.  Would you consider safe  
2   and adequate to be once it is met that the company  
3   can take no further action or that they can expand  
4   on that and further that goal?

5           A    I would say that they can expand and  
6   further that goal as the situation requires.

7           **Q**    All right.

8           MS. ASLIN:  Thank you.  No further  
9   questions.

10           JUDGE PRIDGIN:  All right.  Thank you.  
11   Cross-examination, MECG?

12           MR. WOODSMALL:  Thank you, your Honor.

13                   CROSS-EXAMINATION

14   BY MR. WOODSMALL:

15           **Q**    Following up on that, can you tell me, for  
16   purposes of that statute on Line 4, how do you  
17   define facilities?

18           A    Well, I'm not an attorney, but I would say  
19   that facilities would be the plant that you use to  
20   provide water to the customer.

21           **Q**    And should it be company-owned plant?

22           A    I don't know if I can answer that as I'm  
23   not an attorney.  I would say that my understanding  
24   would be, based on what you presented earlier  
25   today, that it also includes things that are

1 controlled or managed by the company.

2 So to the extent that the company is  
3 trolling or managing the service line, just from a  
4 layman's perspective, that would seem to include  
5 service lines, yes.

6 **Q From a layman's view, the company doesn't**  
7 **own, control, manage your faucet in your kitchen.**  
8 **So would you consider that to be a facility?**

9 A Again, I'm not an attorney, so I don't  
10 really think I can go that far down this road. But  
11 I -- I think there are -- you know, there's a  
12 reasonable cut-off there.

13 **Q And where is the reasonable cut-off in**  
14 **your mind?**

15 MR. BEAR: Your Honor, at this point, I'm  
16 going to object. It calls for a legal opinion.  
17 Mr. Hyman has noted that he's not an attorney. I  
18 think that should be left for briefing.

19 MR. WOODSMALL: Well then, your Honor, I'd  
20 move to strike lines 1 through 6 on page 6, which  
21 is, Is the LSLR program consistent with the  
22 Commission's governing statutes.

23 JUDGE PRIDGIN: The -- the motion to  
24 strike is overruled. The objection is overruled.  
25 I'll let Mr. Hyman answer the question if he knows



1 the answer. And if he doesn't know, he can say so.

2 A I'm sorry. Can you ask the question  
3 again?

4 Q (By Mr. Woodsmall) Where is the line for  
5 where you believe the company's facility should  
6 end?

7 A And, again, as an attorney (sic), I don't  
8 think that I have a good answer to that for you  
9 right now.

10 Q Okay. On at that same page, moving down  
11 -- the next question is, What is DED's interest in  
12 this case? Do you see that?

13 A Yes.

14 Q And moving down to line 17 and continuing  
15 over to the next page, you say, The ability of low  
16 income customers to afford a 3,000 to \$5,500 lead  
17 service line replacement is doubtful. Do you see  
18 that?

19 A Line 1 through 18, and the sentence  
20 continues. Yes.

21 Q Yes. Can you tell me how you define for  
22 purposes of this case a low income customer?

23 A I don't know that I have a definition for  
24 purposes of this case. Although I do know there  
25 are many definitions out there that could be used

1 to select what one considers low income.

2 Q So when you make the statement that their  
3 ability -- this low income customer, their ability  
4 to afford a 3,000/\$5,500 lead service line  
5 replacement, how do you make that determination if  
6 you don't know what their income is?

7 A Well, I don't know what any particular  
8 customer's income is. But I think it's fair to say  
9 that if you are making at or below Federal poverty  
10 left that three to 5500 is probably going to be a  
11 pretty big number for you.

12 Q So in general, low income being Federal  
13 poverty level?

14 A No. Not necessarily. I'm using that as  
15 an example.

16 Q Okay. Can you tell me what is low income  
17 customers, then, for purposes of your testimony?

18 A For purposes of my testimony, I don't have  
19 a specific definition. But as I said before, I  
20 think there are various definitions out there that  
21 one could look at.

22 Q If a customer owns a house that's worth a  
23 half a million dollars, would you consider that to  
24 be a low income customer?

25 A Well, I don't think that the value of the

1 house represents the income. But my assumption  
2 would be no.

3 Q Okay. How would you determine, then, if  
4 you were to look at a Missouri-American customer  
5 whether they're low income? How would you make  
6 that determination?

7 A And I think, again, it would have to -- I  
8 think there are a variety of definitions that could  
9 be used, and I don't have one immediately available  
10 or that has been discussed in this case.

11 Q Okay. Well, let's then flip it. Tell me  
12 a customer that you believe can afford the  
13 3,000/\$5,500 lead service line replacement.

14 A I think there are a lot of factors that  
15 actually go into that besides, you know, income or  
16 property value. It's going to depend not just on  
17 your gross income, but on your disposal income,  
18 what some of your other utility bills are, how much  
19 your rent is, if applicable, your mortgage,  
20 whatever.

21 Q I'm sorry. Does your testimony reference  
22 that, or does it just state low income customers?

23 A It states low income.

24 Q Okay. So you're changing that now to  
25 include what other factors?

1           A    Well, I'm not changing my testimony.

2           Q    You say it depends on other factors  
3   besides low income.

4           A    I think it could. But I think that, in  
5   general, the low income customer is going to be  
6   less likely to be able or -- or let's see. What is  
7   it I said doubtful that they would be able to  
8   afford it.

9           Q    Okay. So for purposes of a hypothetical,  
10   if a customer made a half a million dollars a year,  
11   are you concerned about their ability to afford  
12   this \$5,500 service line replacement?

13          A    I'd probably be -- probably be less  
14   concerned.

15          Q    Okay. What if they made \$150,000 a year?

16          A    Well, again, that's going to get into -- I  
17   mean, probably not. But I would note that, for  
18   example, Federal poverty, again, not binding myself  
19   to Federal poverty level, but that's actually  
20   dependent on the number of people in a household.  
21   So it's not just a matter of a raw number from even  
22   that perspective.

23          Q    And, again, I'm just trying get a better  
24   understanding of DED's, quote, interest in the  
25   case. And -- and you tied your words, not mine,

1 to, quote, low income customers.

2 A I would say that that was part of my  
3 testimony on what our interest is.

4 Q Okay. And that's the part I'm trying to  
5 get at. And you can provide no further  
6 clarification of what you mean in that sentence by,  
7 quote, low income customers?

8 A Again, I can provide you examples, which I  
9 have attempted to do. But nothing firm as to for  
10 the purposes this program if one were to use a  
11 definition what would be the definition.

12 Q And to try to -- if we were to try to  
13 tailor this to meet your interests, DED would be  
14 amenable to -- to putting a test, so to meet the  
15 low income concerns?

16 A I believe so. Yes.

17 MR. WOODSMALL: Okay. No further  
18 questions. Thank you.

19 JUDGE PRIDGIN: All right. Thank you.  
20 Cross from Public Counsel?

21 MR. OPITZ: No, thank you, Judge.

22 JUDGE PRIDGIN: Thank you. Any Bench  
23 questions? Mr. Chairman.

24 CROSS-EXAMINATION

25 BY CHAIRMAN HALL:

1 Q Yeah. Good afternoon.

2 A Good afternoon.

3 Q My understanding is that your testimony is  
4 that the Division supports the -- the LSLR program  
5 but is taking no position on whether an AAO should  
6 be established?

7 A Yes. That's -- that's right. We're not  
8 really taking a position on what the best mechanism  
9 is. Just we want to see this move forward.

10 Q Okay. So focusing on -- on the current  
11 LSLR program, my understanding is that the -- the  
12 program involves a main replacement initiative, and  
13 when -- when the company discovers lead service  
14 lines, then those are replaced. Is that -- is that  
15 your understanding as well?

16 A Yes. That is my understanding as well.

17 Q So there is no attempt to prioritize based  
18 upon either income or vulnerable populations or age  
19 or -- of -- of individuals or age of the homes; is  
20 that correct?

21 A That's -- well, that's -- yeah. I'd say  
22 generally that's my understanding. I don't -- you  
23 know, I don't know that that binds the program  
24 going forward once -- once parties have had time to  
25 consider such issues, but I think for now, yes.

1           Q   And were you in the hearing room during  
2   Mr. Naumick's testimony?

3           A   I was here.

4           Q   And you were in here -- in response to  
5   questions from me indicated that the company would  
6   be open to some kind of collaboration that might  
7   set some criteria for prioritization of projects?

8           A   Yes. And I think we're -- we're open to  
9   that as well. I think, you know, the concern for  
10   us is just not halting or limiting work while we  
11   try to figure all this out.

12          Q   What do you think that collaboration  
13   should look like if -- if there was one  
14   established?

15          A   Well, just from a dollar perspective, I  
16   think OPC had mentioned 12.5 percent of 8 million  
17   dollars. When you work that out, that's a million  
18   dollars.

19               And as my Counsel noted in his opening,  
20   the Division of Energy has certainly done  
21   state-wide studies, which I don't think this would  
22   need to be, for far less. I don't know if I can  
23   get into specifics since these are contracts that  
24   the State --

25          Q   Yeah. I guess my sense that it would not

1    -- it wouldn't necessarily require a study. It  
2    might just require getting the right people in a  
3    room to sit down and discuss how to prioritize.

4           A    Sure. I mean, if that -- if we don't do a  
5    study, then yeah. I think that's all you need.  
6    And I think in terms of -- sorry.

7           Q    No.

8           A    In terms of, you know, what the scope  
9    should be, I think that was one of the keys that  
10   we've noted is that it shouldn't be a state-wide  
11   thing.

12               If we're talking about money from  
13   Missouri-American ratepayers, it should be  
14   something to specific to Missouri-American and the  
15   things that they can control, which is lead in the  
16   water.

17           Q    So what -- who do you think the right  
18   parties would be for that kind of collaboration?  
19   and I won't necessarily hold you to this. I'm just  
20   interested in your -- in your thoughts as you sit  
21   here today. Who would be the right parties in that  
22   kind of collaboration?

23           A    We thought about that. I think some of  
24   the parties that OPC just suggested for sure such  
25   as OPC, Staff. I think he mentioned that -- OPC



1 mentioned Department of Health. I think DNR would  
2 make sense. I think DED would make sense.

3 I think there are a lot of them that --  
4 that could be in it. But I think, you know, sort  
5 of general outlines make sense in terms of who  
6 would be included.

7 CHAIRMAN HALL: Okay. I have no further  
8 questions. Thank you.

9 JUDGE PRIDGIN: Thank you. Any further  
10 Bench questions?

11 COMMISSIONER STOLL: No questions.

12 JUDGE PRIDGIN: Thank you. Any recross  
13 based on Bench questions? Missouri-American?

14 CROSS-EXAMINATION

15 BY MR. COOPER:

16 Q And I would assume Missouri-American would  
17 be on your list as well?

18 A Oh, you know, I get into these cases. I  
19 just make assumptions about -- yeah. Yes, they  
20 would. Sorry.

21 JUDGE PRIDGIN: All right. Thank you, Mr.  
22 Cooper. Staff?

23 MS. ASLIN: No questions.

24 JUDGE PRIDGIN: MECG?

25 MR. WOODSMALL: Yes, briefly.

1 CROSS-EXAMINATION

2 BY MR. WOODSMALL:

3 Q In response -- or following up on the  
4 question from the Chairman, other than the cost,  
5 the outlying of the collaborative as set forth in  
6 Mr. Marke's testimony, other than the cost, you  
7 have no problem with the scope of his pilot?

8 A Well, I don't believe that was my  
9 testimony.

10 Q Okay. What parts of his pilot other than  
11 the costs do you take exception to?

12 A Well, I think one of the things that I  
13 mentioned to the Chairman just now was that this  
14 should be limited to Missouri-American's territory  
15 since we're talking about Missouri-American  
16 ratepayers. I think that's one potential thing.

17 I'd -- I'd have, you know, go back and  
18 look point by point at what he suggested, but I  
19 think that's kind of the big one right there.

20 Q Okay. Off the top of your, and that's  
21 all --

22 A Yes.

23 Q That's the one and the cost that stands  
24 out to you?

25 A Yeah. I think those are the two things,

1 you know, just right now. But if I went back and  
2 looked, I'd -- I'd have to go back and look and see  
3 it point by point.

4 But, for example, his question about real  
5 estate is interesting. I think it's something that  
6 could be explored.

7 Q Okay. And would DED be willing to  
8 participate in such a collaborative as set forth by  
9 Mr. Marke?

10 A Generally, yes. I mean, I -- I can't make  
11 a commitment for the Director. But I -- I think  
12 generally, yes.

13 MR. WOODSMALL: Okay. No further  
14 questions. Thank you.

15 JUDGE PRIDGIN: Thank you. Public  
16 Counsel?

17 MR. OPITZ: No, thank you, Judge.

18 JUDGE PRIDGIN: Thank you. Redirect?

19 MR. BEAR: Just some brief redirect.

20 REDIRECT EXAMINATION

21 BY MR. BEAR:

22 Q Earlier, you were discussing with  
23 Mr. Woodsmall the definition of low income and how  
24 you would use that within your testimony. Do you  
25 recall that, sir?

1           A    Yes, I do.

2           Q    And the Department of Economic Development  
3   and the Division of Energy, which is within it,  
4   there are multiple programs, correct, which try to  
5   get at that definition, correct?

6           A    Right. And, I mean, it really depends by  
7   the program what definition you use. I mean, I  
8   think that to low income heating assistance might  
9   be different than weatherization or a particular  
10   utility's energy efficiency program. It's really  
11   going to vary.

12          A    And would it be fair to say that as far as  
13   the precise contours of low income that you would  
14   feel that that would be most appropriate for  
15   collaboration or further study in order to  
16   precisely set those contours?

17          A    Oh, yes. Absolutely.

18          Q    But as I understand it, it would be fair  
19   to say that you're philosophically okay with  
20   allocating different treatment for different income  
21   classes of customers of Missouri-American?

22          A    If -- if by allocation you mean figuring  
23   out who pays for what, then yes.

24          Q    And -- and that might even include  
25   possibly the customer having to, in certain

1 instances, have to pay part or all of the line?

2 A In certain instances, sure.

3 Q Okay. The Chairman had asked some  
4 questions about prioritization. In your testimony,  
5 you're not philosophically opposed to conducting a  
6 study, correct?

7 A No. Not philosophically. I think the  
8 main issue is just what they're doing now doesn't  
9 stop or get limited.

10 Q Basically, if I understand this, your  
11 testimony is that while we are replacing water  
12 main, we should address lead pipes until we figure  
13 out the overall policy for doing so?

14 A Right. And I think we've heard today  
15 that, you know, the options, if you don't go ahead  
16 with this that they have to start re-prioritizing  
17 mains that they're avoiding ones that they might  
18 otherwise need to replace.

19 Then you might have to do something  
20 sub-optimal such as a partial replacement. It just  
21 becomes a bit messier if you continue as is before  
22 you figure out the right solution.

23 Q And in your opinion -- and that would be  
24 bad public policy to not address it at least in the  
25 interim?

1           A     I think so. Yeah.

2           MR. BEAR: Okay. Nothing further.

3           JUDGE PRIDGIN: All right. Mr. Hyman,  
4     thank you very much. You may step down. It looks  
5     like the next witness is Mr. Merciel. And after  
6     that it would be Mr. Dallas.

7           And then we'll -- we'll see how long cross  
8     takes. My goal is to kind of keep going until we  
9     have a natural break somewhere around 5:00 so  
10    people would be prepared depending on how  
11    long-cross examination goes. I would appreciate  
12    it. Anything further before Mr. Merciel is sworn?

13          MR. BEAR: Yes. Your Honor, I have no  
14    further cross-examination for any witnesses. I  
15    would ask permission for Mr. Hyman and myself to be  
16    excused so that we can handle other legal business  
17    for the State.

18          JUDGE PRIDGIN: Any objections? All  
19    right. That request is granted. Thank you very  
20    much.

21          MR. BEAR: Thank you, your Honor.

22          JUDGE PRIDGIN: All right. Anything  
23    further? All right. Mr. Merciel, if you'll raise  
24    your right hand to be sworn, please.

25                               JAMES MERCIEL,

1 being first duly sworn to testify the truth, the whole  
2 truth, and nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. ASLIN:

5 JUDGE PRIDGIN: Thank you very much. You  
6 may have a seat, Mr. Merciel. And Ms. Aslin, take  
7 it when you're ready.

8 Q (By Ms. Aslin) Would you please state and  
9 spell your name?

10 A James A. Merciel, Jr. Merciel is  
11 M-e-r-c-i-e-l.

12 Q And how are you employed and in what  
13 capacity?

14 A I'm employed at the Public Service  
15 Commission in the Water & Sewer Department. I am  
16 an engineer.

17 Q Did you prepare or cause to be prepared  
18 rebuttal testimony in this case marked as  
19 Exhibit 13?

20 A Yes, I did.

21 Q Do you have any changes or corrections to  
22 that testimony?

23 A No.

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

1           A    Yes.

2           Q    And are the answers contained in that  
3   testimony true and correct to the best of your  
4   knowledge and belief?

5           A    Yes.

6           MS. ASLIN:  I move for the admission of  
7   Exhibit 13.

8           JUDGE PRIDGIN:  Any objections.Hearing  
9   none, Exhibit 13 is admitted.

10           (Exhibit 13 was offered and admitted into  
11   evidence.)

12           MS. ASLIN:  And I tender the witness for  
13   cross.

14           JUDGE PRIDGIN:  Ms. Aslin, thank you.  
15   Cross-examination, Missouri-American?

16           MR. COOPER:  No questions.

17           JUDGE PRIDGIN:  MECG?

18           MR. WOODSMALL:  No questions.

19           JUDGE PRIDGIN:  Public Counsel?

20           MR. OPITZ:  No, thank you, Judge.

21           JUDGE PRIDGIN:  Any Bench questions?  
22   Mr. Chairman?

23           CHAIRMAN HALL:  Yeah.  I think I have a  
24   few.

25                                   CROSS-EXAMINATION



1 BY CHAIRMAN HALL:

2 Q Good afternoon.

3 A Good afternoon, Mr. Chairman.

4 Q Could you explain to me why partial lead  
5 service line replacement is not a good policy?

6 A Yes. When doing partial service line  
7 replacements, that means an existing service line  
8 would be cut so that it may be modified, extended,  
9 whatever, leak repaired.

10 And in so doing, it gets into an effect  
11 that's called scaling in water pipes, and the  
12 scaling is an insulator between the water and the  
13 lead.

14 And that helps prevent any -- any leaking  
15 of lead into the water. Well, when you disturb the  
16 pipe, than that scaling can be disturbed and  
17 cracked off and you do expose the water to the  
18 lead. And that's -- that's where the risk comes  
19 in.

20 Q And how long does that risk last?

21 A Well, I suppose the risk would last until  
22 the scaling reforms. And I -- to be honest, I  
23 don't know how long that would take. We're --  
24 we're likely talking about months -- weeks or  
25 months. I'd also like to point out that the water

1 leaching -- lead leeching into the water, it  
2 doesn't really happen when the water is flowing  
3 through a pipe. It's more when the water is  
4 sitting there. It takes some time to do that, like  
5 water sitting other night.

6 So when the water is sitting there, you  
7 would have a slug of water that could come -- come  
8 through and end up in your -- in your cup and you  
9 ingest it.

10 Q And so is that part of the reason why the  
11 service line is -- is a more serious issue than --  
12 than the interior plumbing?

13 A Well, yes. I should also add, in  
14 reviewing news articles and studies that we see  
15 from time to time, including the lead service line  
16 replacement collaborative and papers we see with  
17 AWWA and -- and with various groups with EPA like,  
18 their Science Advisory Board and Drinking Water  
19 Advisory Board, groups like that, there seems to be  
20 consensus that -- that lead service lines is one of  
21 the primary risks of lead leaching leaking into the  
22 water, more so than internal piping.

23 It does exist there with lead solder  
24 joints and lead in the water fixtures, you know,  
25 faucets and that sort of thing. But the consensus

1 is the lead service lines are the larger risk.

2 And, also, that's something outside of the  
3 house. It's underground, something utilities are  
4 able to deal with as opposed to plumbing inside the  
5 house.

6 Everything I see, everybody seems to be  
7 drawing the line at -- at the customer's foundation  
8 wall or just inside of it.

9 Q Do you believe that -- that the  
10 prioritization that is in place for this program as  
11 to what service lines to replace is the ideal  
12 program? Or do you think that could be improved  
13 upon?

14 A I -- I -- well, there's always room for  
15 improvement. And there's more that can be done.  
16 And I believe I stated in my testimony, I don't --  
17 the program that -- that Missouri-American is  
18 proposing, at this point in time, I don't think  
19 will be addressing all service lines because they  
20 are proposing that as many replacements are done  
21 they will replace the lead service lines as they  
22 run across them with those replacements.

23 I think it's reasonable. I think it's a  
24 wise thing to do. But, you know, this company's  
25 been replacing water mains for -- for many years.

1 It got pretty serious in the '90s. That's how we  
2 ended up with the ISRS law when -- when they  
3 started ramping up the main replacement.

4 And the point there being within the past  
5 20 years or so, there are a lot of mains that have  
6 been replaced that I'm sure have had lead service  
7 lines attached to them. I don't have a count of  
8 them.

9 But there are -- there are some lead  
10 service lines that are connected to fairly new  
11 mains. Those mains are not going to be replaced  
12 within the next ten years.

13 Q Would -- would Staff support a -- a  
14 modification to the program so as to prioritize  
15 certain lead service lines over others, for  
16 example, maybe those that are leading into schools  
17 or -- or other -- or establishments with -- with  
18 vulnerable populations?

19 A Yes. I think there are things like that  
20 that can be done. The company's already mentioned  
21 as one of the factors of selecting main replacement  
22 priorities doing a lead service line overlay and  
23 lead -- the presence of lead service lines can be a  
24 factor.

25 I don't think it changed. As far as I

1 know, they already have critical customers. Like  
2 the hospitals are on -- on some of the mains and  
3 might be up for replacement. That might bump it up  
4 a little bit.

5 I guess there are other types of critical  
6 customers. Schools certainly could be included or  
7 at least, you know, considered to be, to be  
8 included.

9 **Q And -- and -- and would -- would Staff**  
10 **support that type of collaborative process?**

11 A Oh, as far as collaborative, absolutely. I  
12 mentioned that in my testimony, too. I -- I think  
13 the program that's being proposed is reasonable,  
14 and it should go forward, but further explore this  
15 for -- to get to a more comprehensive lead service  
16 line replacements, I think, is reasonable.

17 **Q Do you believe that the -- the company's**  
18 **estimate of 30,000 lead service customer lead**  
19 **service lines is a reasonable estimate?**

20 A It's -- to me, it's plausible. I -- I've  
21 heard that number, actually for a long time before  
22 this really became an issue, particularly in St.  
23 Louis. St. Louis County water company always had  
24 good records, and they've kind of had a handle on  
25 what they had.

1           As Mr. Aiton said, some of the other  
2   areas, they don't really have quite so good records  
3   compared to the system from somebody else. But I  
4   -- I really have no reason to doubt their -- their  
5   estimates. It is an estimate, you know. Whether  
6   it's -- it's not going to be that exact number so  
7   we have to keep that in mind.

8           CHAIRMAN HALL: Okay. I have no further  
9   questions through.

10          MR. MERCIEL: Yes, sir.

11          JUDGE PRIDGIN: Any questions?  
12   Commissioner Stoll.

13                   CROSS-EXAMINATION

14   BY COMMISSIONER STOLL:

15          **Q   Good afternoon.**

16          A   Good afternoon.

17          **Q   Since I -- since we've got you on the**  
18   **stand, what's the situation like in other**  
19   **jurisdictions in Missouri? Do you have any idea?**

20               **Like how many lead lines do -- lead**  
21   **service lines do people think there are in**  
22   **municipalities and so on?**

23          A   I've -- I've never seen a count on that.  
24   We called some of our companies is. As all of you  
25   probably recall, the water and sewer department

1 wrote a report about the state of lead in Missouri  
2 at Chairman Hall's request.

3 We called some of our companies. Raytown  
4 Water Company, for example, the founder of that  
5 company did not believe in lead back in 1925. And  
6 they say they don't have any lead -- lead service  
7 lines. They never did -- they never did prevent  
8 them to be installed.

9 Some of the other utilities, Empire  
10 Electric Company has water systems in three small  
11 towns in southwest Missouri. It's very likely the  
12 old parts of town have -- have lead service lines.  
13 But I don't know that. I've not seen a count.

14 You know, I've never seen any evidence of  
15 anybody digging them up. But it's -- it's probably  
16 safe to suspect that there are some. As far as  
17 state-wide, I really have no idea, though.

18 COMMISSIONER STOLL: Okay. Yeah. Okay.  
19 Thank you.

20 MR. MERCIEL: Yes, sir.

21 JUDGE PRIDGIN: Any further Bench  
22 questions? Recross based on Bench questions?  
23 Missouri-American?

24 RECROSS EXAMINATION

25 BY MR. COOPER:

1           Q    Just a clarification, a follow-up on  
2   Commissioner Stoll's question. I take it from  
3   that, then, that you don't have a feel for City of  
4   Kansas City, City of St. Louis, Springfield,  
5   Columbia, those larger cities that are -- that are  
6   served by municipalities?

7           A    That's correct. I have no idea. First of  
8   all, we don't deal with them. Even with contacts  
9   with some of the municipals through water  
10   organizations, I've never -- never seen any data.  
11   Never heard anything about any count.

12           MR. COOPER: Thank you.

13           JUDGE PRIDGIN: MECG?

14           MR. WOODSMALL: Briefly.

15                    RE CROSS EXAMINATION

16   BY MR. WOODSMALL:

17           Q    You were asked some questions by the  
18   Chairman about prioritizing, -- I think the word he  
19   used, vulnerable customers?

20           A    I believe that's correct. Yes.

21           Q    You attached some invoices to your  
22   rebuttal testimony. Do you recall that?

23           A    Yes, I do.

24           Q    Do you know if any of those invoices were  
25   for customers that you would consider to be



1     **vulnerable?**

2           A     You know, I -- I don't know because I  
3     didn't really look at that. That was simply from  
4     some projects that this company got started.  
5     That's what we asked for in the data request in --  
6     I'm not sure when it was. Maybe in May or earlier  
7     this year.

8           And those were -- were the invoices from  
9     projects that they got back. It -- it was -- it  
10    was -- I don't believe it was based on any  
11    vulnerability. That's just the projects it had  
12    going on at the time.

13          **Q     So you are not aware whether any of those**  
14    **invoices are for schools, hospitals, nursing homes,**  
15    **low income?**

16          A     Well, it's my understanding all of -- all  
17    of those are residential.

18          **Q     Okay. And do you -- are you aware whether**  
19    **any of them are vulnerable in terms of low income?**

20          A     I really don't know.

21          **Q     You didn't study that at all?**

22          A     I didn't look at that. No, sir.

23               MR. WOODSMALL: Okay. No further  
24    questions.

25               JUDGE PRIDGIN: All right. Thank you.

1 Public Counsel?

2 MR. OPITZ: Briefly, Judge.

3 RECROSS EXAMINATION

4 BY MR. OPITZ:

5 Q Mr. Merciel, you were discussing, I guess,  
6 rescaling occurring in the pipes --

7 A Yes.

8 Q -- with the Chairman. What is the basis  
9 for your estimate of weeks or months for a pipe to  
10 rescale?

11 A I have to admit it's a wild guess.

12 Q Okay.

13 A I don't know. I've never -- I've never  
14 looked at it. Scaling does occur.

15 Q Okay.

16 A I don't know how long it takes a water --  
17 somebody better with water chemistry would have to  
18 answer that.

19 Q You mentioned that sometimes a disturbance  
20 will cause the scale to break off in the pipe?

21 A Yes.

22 Q Can you tell me what kind of disturbance  
23 would be required for the scale to break off?

24 A Well, any time there's any vibration -- I  
25 don't know. I don't know how to describe it.

1 Shaking, moving of the pipe. The example we have,  
2 you can see where that pipe was cut with a saw, and  
3 -- and that -- that broke some scaling off.

4 I saw a news article, it was from New  
5 Orleans, City of New Orleans was doing some street  
6 work, and they also own their water system,  
7 municipal water system. And the City was informing  
8 customers that doing street work could be causing  
9 vibrations if they had lead service lines or it  
10 cause could cause them some problems.

11 They weren't offering to replace it or  
12 anything like that. It was just notifying  
13 customers that there could be issues with lead  
14 pipes. Just one of the bits of information that I  
15 saw and reviewed all the stuff.

16 **Q Since you mentioned the street**  
17 **disturbance, is city of Jefferson City served by**  
18 **Missouri-American?**

19 A Yes, it is.

20 **Q And have you noticed any, I guess,**  
21 **construction going on around town here?**

22 A Well, I'm going to -- I'm going to say  
23 yes. I think every City has projects going on from  
24 time to time.

25 **Q And do you know if the company is**

1     **notifying customers around those construction**  
 2     **projects, whether it's -- it's got -- they have**  
 3     **lead service lines?**

4           A     To my knowledge, they're not.

5           **Q     Okay. Thank you.**

6           A     I could be wrong, but not to my knowledge.

7           MR. OPITZ: That's all I have, Judge.

8     Thank you.

9           JUDGE PRIDGIN: All right. Thank you.

10    Redirect?

11                         REDIRECT EXAMINATION

12    BY MS. ASLIN:

13           **Q     Mr. Merciel, in the '90s, was there, to**  
 14     **your knowledge, a collaborative work group that**  
 15     **worked on prioritizing main replacements?**

16           A     There -- yeah. I believe there was a work  
 17     group. There was quite a bit of activity with main  
 18     replacements, what the company should be doing, how  
 19     they should be studying it.

20                         It -- it went through, I'm going to say,  
 21     two or three rate cases on how to settle that. So  
 22     the answer is yes.

23           **Q     And do you know how they were prioritizing**  
 24     **those replacements?**

25           A     Well, I -- I don't remember. It's based

1 primarily on -- on break rates. Like rates per --  
2 I'm going to say, breaks per -- I'm going to say  
3 breaks per mile. Might have to break it down  
4 different -- you know, shorter lengths.

5 It's with main breaks and leaks. But  
6 there are other prioritizations the company's  
7 already mentioned they do in conjunction with road  
8 work you do have critical customers.

9 I'm -- there's probably other factors that  
10 I'm forgetting, but there were several -- several  
11 factors involved with main replacement work.

12 **Q And just one last question. You talk**  
13 **about -- you talked about in answers to questions**  
14 **approximate lead leaching when there's some sort of**  
15 **disturbance when the scale is removed from the**  
16 **pipe. That also be caused by unanticipated events,**  
17 **like natural disasters, like maybe an earthquake?**

18 A I suppose it could.

19 **Q Thank you.**

20 A I haven't seen a study on that, though.

21 MS. ASLIN: No further questions.

22 JUDGE PRIDGIN: Mr. Merciel, thank you  
23 very much. You may step down. I believe Mr.  
24 Dallas is the next witness. PRIDGIN: If you'll  
25 raise your right hand to be sworn, please, sir.

1 JONATHAN DALLAS,  
2 being first duly sworn to testify the truth, the whole  
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ASLIN:

6 JUDGE PRIDGIN: Thank you, sir. You may  
7 have a seat. And, Ms. Aslin, when you're ready.

8 Q (By Ms. Aslin) Would you please state and  
9 spell your name for the court reporter?

10 A Jonathan, J-o-n-a-t-h-a-n, Dallas,  
11 D-a-l-l-a-s.

12 Q How are you employed and in what capacity?

13 A I'm employed by the Missouri Public  
14 Service Commission, Water & Sewer Department, as a  
15 Utility Operations Specialist.

16 Q And did you prepare or cause to be  
17 prepared rebuttal testimony in this case marked as  
18 Exhibit 11?

19 A Yes.

20 Q Do you have any changes or corrections to  
21 that testimony?

22 A No.

23 Q And are those answers true and correct to  
24 the best of your knowledge and belief?

25 A They are.

1           Q    If I were to ask you those questions  
2   today, would your answers be the same?

3           A    Yes.

4           MS. ASLIN: Judge, I'd move for the  
5   admission of Exhibit 11.

6           JUDGE PRIDGIN: Any objections? Hearing  
7   none, Exhibit 11 is admitted.

8           (Exhibit 11 was offered and admitted into  
9   evidence.)

10          MS. ASLIN: I tender the witness for  
11   cross.

12          JUDGE PRIDGIN: Thank you.  
13   Cross-examination, Missouri-American?

14          MR. COOPER: No, thank you, your Honor.

15          JUDGE PRIDGIN: MECG?

16          MR. WOODSMALL: No questions?

17          JUDGE PRIDGIN: Public Counsel?

18          MR. OPITZ: No, thank you, Judge.

19          JUDGE PRIDGIN: Any Bench questions?

20          CHAIRMAN HALL: No questions. Thank you.

21          COMMISSIONER STOLL: No questions.

22          COMMISSIONER KENNEY: No questions. Thank  
23   you.

24          JUDGE PRIDGIN: Mr. Dallas, thank you very  
25   much. You may step down. Ms. McMellen, you're the

1 next witness. If you'll raise your right hand to  
2 be sworn, please.

3 AMANDA MCMELLEN,  
4 being first duly sworn to testify the truth, the whole  
5 truth, and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ASLIN:

8 JUDGE PRIDGIN: Thank you very much. You  
9 may have a seat. Ms. Aslin, when you're ready.

10 Q (By Ms. Aslin) Would you please state and  
11 spell your name?

12 A Amanda McMellen, M-c-M-e-l-l-e-n.

13 Q How are you employed and in what capacity?

14 A I'm employed by the Staff of the Missouri  
15 Public Service Commission as Utility Regulatory  
16 Auditor.

17 Q And did you prepare or cause to be  
18 prepared rebuttal testimony in this case marked as  
19 Exhibit 12?

20 A Yes.

21 Q Do you have any changes or corrections to  
22 that testimony?

23 A No, I do not.

24 Q And are the answers contained in that  
25 continual true and correct to the best of your



1     **knowledge and belief?**

2           A     Yes.

3           Q     **If I were to ask you those questions**  
4     **today, would your answers be same?**

5           A     Yes.

6           MS. ASLIN: Judge, I'd ask for the  
7     admission of Exhibit 12.

8           JUDGE PRIDGIN: Any objections? No  
9     objections, Exhibit 12 is admitted.

10           (Exhibit 12 was offered and admitted into  
11     evidence.)

12           MS. ASLIN: Tender the witness for cross.

13           JUDGE PRIDGIN: Ms. Aslin, thank you.  
14     Cross-examination, Missouri-American?

15           MR. COOPER: No, your Honor.

16           JUDGE PRIDGIN: MECG?

17           MR. WOODSMALL: No questions.

18           JUDGE PRIDGIN: Public Counsel?

19           MR. OPITZ: Briefly, Judge.

20                     CROSS-EXAMINATION

21     BY MR. OPITZ:

22           Q     **Ms. McMellen, are you a Certified Public**  
23     **Accountant?**

24           A     No, I am not.

25           Q     **Have you been in the hearing room since**

1 the opening statements this morning?

2 A Yes, I have.

3 Q And you were here when the -- Counsel for  
4 the company said that they were no longer  
5 requesting an order calling it a regulatory asset.  
6 Do you recall that?

7 A Yes, I do.

8 Q Does that change your recommendation?

9 A No, it does not.

10 Q Are you aware of -- of anything in the  
11 USOA or GAAP that requires the company to get an  
12 order from the Commission prior to booking costs to  
13 Account 186?

14 A It's not required.

15 MR. OPITZ: That's all the questions I  
16 have. Thank you.

17 JUDGE PRIDGIN: Thank you. Bench  
18 questions? Chairman?

19 CROSS-EXAMINATION

20 BY CHAIRMAN HALL:

21 Q Good afternoon.

22 A Good afternoon.

23 Q You -- you've testified that -- that you  
24 believe that it's -- that it would be appropriate,  
25 for the company to -- to book these expenses in

1 Account 186; is that correct?

2 A Correct.

3 Q Do you have a position as to whether it  
4 would be appropriate to book it in 345?

5 A Not at this time. That would be  
6 determined in the pending rate case.

7 Q I understand that that's when it will be  
8 ultimately determined. I want to make you have an  
9 opinion on -- on that issue.

10 A Not at this moment.

11 Q Isn't it true that it's -- that it's --  
12 that it's necessary and -- hang on a second,  
13 please.

14 Do you believe that it is appropriate  
15 under the uniform system of accounts to -- to put  
16 investment in customer-owned services -- or  
17 customer owned-service lines?

18 A In regular investment, such as like plant  
19 in service?

20 Q Exactly.

21 A Typically, no. And that's not what  
22 they're requesting in this AAO case.

23 Q I understand. Why -- why typically no?

24 A Because it's customer-owned property that  
25 the -- that is not the responsibility of the

1 company.

2 Q And so, typically, it would be  
3 inappropriate to put that -- that kind of  
4 investment in 345?

5 A Correct.

6 CHAIRMAN HALL: Okay. I have no further  
7 questions. Thank you.

8 JUDGE PRIDGIN: Thank you. Bench  
9 questions?

10 COMMISSIONER STOLL: No questions. Thank  
11 you.

12 JUDGE PRIDGIN: All right. Cross based on  
13 Bench questions? Missouri-American?

14 MR. COOPER: Yes, briefly.

15 RECROSS EXAMINATION

16 BY MR. COOPER:

17 Q Ms. McMellen, if you're aware -- well, let  
18 me back up. Are you aware of any deferrals that  
19 are treated like rate base, meaning that the  
20 unamortized balance is given a rate of return?

21 A Yes.

22 Q On the -- post rate case even?

23 A Yes. That has happened in the past.

24 Q Okay. Thank you.

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

1 have.

2 JUDGE PRIDGIN: Thank you. MECG?

3 MR. WOODSMALL: No questions.

4 JUDGE PRIDGIN: Public Counsel?

5 MR. OPITZ: No, thank you, Judge.

6 JUDGE PRIDGIN: Redirect?

7 MS. ASLIN: No questions.

8 JUDGE PRIDGIN: All right. Ms. McMellan,  
9 thank you. I think Dr. Marke is the next witness.  
10 If you'll raise your right hand to be sworn,  
11 please.

12 GEOFF MARKE,  
13 being first duly sworn to testify the truth, the whole  
14 truth, and nothing but the truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. OPITZ:

17 JUDGE PRIDGIN: Thank you, sir.

18 Mr. Opitz, when you're ready, sir.

19 Q (By Mr. Opitz) Would you please state and  
20 spell your name for the record?

21 A Geoff, G-e-o-f-f-, Marke, M-a-r-k-e.

22 Q And where are you employed and in what  
23 capacity?

24 A Missouri Office of Public Counsel. I'm  
25 the Chief Economist.

1           Q    Did you prepare pre-filed testimony in  
2   this case that is going to be marked as Exhibit 14,  
3   your direct testimony, Exhibit 15, your rebuttal  
4   testimony, and Exhibit 16 and 16-C, your  
5   surrebuttal testimony?

6           A    Yes.

7           Q    If I were to ask you the questions posed  
8   in that testimony, would your answers be the same?

9           A    Yes.

10          Q    And that testimony is true and accurate to  
11   the best of your knowledge and belief?

12          A    It is.

13               MR. OPITZ: Judge, at this time, I would  
14   offer Exhibits 14, 15, 16 and 16-C into evidence.

15               JUDGE PRIDGIN: Any objections? Hearing  
16   no objection, Exhibits 14, 15, 16 and 16-C are  
17   admitted.

18               (Exhibits 14, 15, 16 and 16-C were offered  
19   and admitted into evidence.)

20               MR. OPITZ: I'll tender the witness for  
21   cross-examination.

22               JUDGE PRIDGIN: Mr. Opitz, thank you.  
23   Cross, MECG?

24               MR. WOODSMALL: Yes. Briefly.

25                               CROSS-EXAMINATION

1 BY MR. WOODSMALL:

2 Q There were some questions from primarily  
3 Commissioner Stoll earlier to company witnesses, so  
4 I'll just jump to those now.

5 Are you aware of what other jurisdictions  
6 are doing for regulated utilities that have  
7 customer-owned lead service lines?

8 A I -- I have an idea.

9 Q And what is your understanding?

10 A As the company witnesses already alluded  
11 to, on the investor-owned side, it's influx. So  
12 Pennsylvania American Water, New Jersey American  
13 Water both recently put out lead service line  
14 replacements within the context of their rate case.

15 Missouri is the only one that's doing it  
16 outside of a rate case that I'm aware of. Indiana  
17 did have Legislative -- enabling Legislative action  
18 that was eventually passed.

19 York Water, which was referenced earlier  
20 by Chairman Hall, in that case, York Water was in  
21 violation of the lead and copper rule. So they  
22 were -- essentially penalized and their  
23 shareholders were penalized in that regard.

24 Municipal side, in my surrebuttal  
25 testimony, I've got a map that Mr. Naumick had

1 printed up which listed various municipal systems  
2 that had undergone action.

3 I would caution that there's a big  
4 distinction between municipal systems and  
5 investor-owned. And since the question was  
6 investor-owned, I'll just leave it at that. But  
7 that's what I'm aware of.

8 Q Well, you can then probably guess my next  
9 question. What has happened on the municipal side,  
10 to your knowledge, around the country?

11 A The -- the big case study, the big go-to  
12 example is Madison, Wisconsin. In Madison,  
13 Wisconsin, the company -- municipal company was not  
14 able to use the phosphate chemical treatment for  
15 environmental reasons.

16 This is around the mid '90s. At that  
17 point, they decided in absence of being able to  
18 treat the water, let's go ahead -- and, again,  
19 Madison was in violation, so they -- they exceeded  
20 the lead and copper rule threshold.

21 They had to take some -- they're required  
22 by Federal rational action to take some action.  
23 They decided to move forward with actually  
24 replacing the lead service line, and that process  
25 took over a decade.



1 Customers, in some cases, were given up to  
2 \$1,000 of -- to offset some of the costs through  
3 the -- the municipal system.

4 I actually referenced Madison as case  
5 study example in my direct testimony thinking that  
6 was a -- a good example. Right? As I delved  
7 further into the research, I -- I went through  
8 Madison's post-replacement programs and their  
9 studies.

10 And in the Madison example, what happened  
11 was the lead came back. I mean, they -- they --  
12 they had high concentrations of lead in particular  
13 homes even after they withdrew those lead service  
14 lines.

15 Flint's the other example. There's a lot  
16 of discussion about Flint. I've given it a lot of  
17 attention, you know, within my testimony. That's a  
18 municipal system that's taking place.

19 In Washington D.C., which is where a lot  
20 of the -- the -- the fear about partial line  
21 replacement first came up. That's a good example  
22 right there.

23 And the distinction here is important  
24 because when we talk about partial line  
25 replacement, when we're talking about removing that

1 -- I heard Mr. Merciel say that that was an example  
2 of a saw cut.

3 And even in an example like that, you're  
4 going to get variability within the studies. I  
5 mean, think of it in this terms.

6 Any time you break a pipe, any time you  
7 have disturbance, you run the risk of -- of lead  
8 getting into the system.

9 If we're sawing something, that's going to  
10 release particles much easier than, say, a pipe  
11 cut. Right? That's -- that's the sort of detail  
12 that -- that really needs to be undergone when you  
13 look at the studies that have taken place.

14 And there are in the a lot of studies.  
15 But I'm -- I'm jumping ahead. But that's --  
16 that's what I know in terms of municipal systems.

17 **Q Okay. So bottom line, are you aware of**  
18 **any utilities, regulated or municipal, that have**  
19 **socialized or uplifted the costs from customers to**  
20 **other customers?**

21 **A** No. And we -- in my surrebuttal, I  
22 actually point that fact out, that between Staff,  
23 between the company, between DED, there isn't an  
24 example that we can point to, and that's the model  
25 example we should be following that's the

1 regulatory precedent to be following, and that's  
2 why this case is so important because this is  
3 really setting -- this would be an unprecedented  
4 regulatory ruling if we were to move forward as --  
5 as the company's projecting -- is planning on  
6 doing, proposing.

7 Q So to date, to the extent these service  
8 lines, lead service lines, are being replaced,  
9 customers are footing the bill for that. Is that  
10 your understand?

11 A In -- in the vast majority of cases,  
12 that's -- that's the issue. I mean, the initial  
13 lead and copper rule actually provided for the  
14 utilities to go ahead and replace the customer's  
15 side.

16 It was actually the AWWA that sued the  
17 EPA. And the District Court found in favor of the  
18 AWWA to overturn that. And we've been in limbo  
19 since then.

20 Q Okay. So initially, the Feds attempted to  
21 impose that legal obligation onto the utility, and  
22 AWWA sued so they -- they weren't legally obligated  
23 to replace those customers' service lines. Is that  
24 what you're saying?

25 A That is correct. And this is detailed in

1 my rebuttal testimony, if you give me one second.  
2 Page 12, beginning on line 21, to page 13, line 6.

3 Q Thank you. Moving on, you've talked about  
4 in your direct testimony, and it's been the subject  
5 of conversation here today, of a collaborative.  
6 And I use that interchangeable with pilot program.  
7 Are you comfortable with both those terms?

8 A I am.

9 Q Okay. Are there any entities that you  
10 would expect or want to see in a pilot program that  
11 aren't present in this case today?

12 A Yes, there are. I think that's -- I would  
13 point that as a -- as a real deficiency in what's  
14 in place right now.

15 Just to illustrate, to state examples are  
16 or State offices. I think it's important that DNR  
17 be present, that Health & Human Services be  
18 present, or Health & Senior Services.

19 I stand corrected. Even Social Services.  
20 These are -- Social Services is obviously in charge  
21 of, you know, low income and low income at risk  
22 kids.

23 Health & Senior Services actually  
24 regulates and administers the blood levels across  
25 the state. I've spoken with them. They -- at

1 great lengths.

2 DNR who is actually charged with enforcing  
3 or making sure that companies are compliant with  
4 the lead and copper rule.

5 I mean, right now, what we're talking  
6 about is -- is an accelerated schedule to -- to an  
7 AAO, and that's just severely deficient in my  
8 opinion. So, yes, there -- there should definitely  
9 be more people at the table.

10 Q You talked earlier about municipalities.  
11 And I believe Mr. Merciel might have mentioned  
12 Kansas City, St. Louis, Columbia and Springfield.  
13 What is -- in your expert opinion, what do you  
14 think the state of customer-owned lead service  
15 lines would be in those municipalities? More  
16 prevalent? Less prevalent?

17 A More prevalent.

18 Q And why is that?

19 A Yeah. On a real general level, you know,  
20 the lead service lines are going to follow the age  
21 of the homes, generally speaking.

22 I can tell you having, visited  
23 Missouri-American on the site visit and having  
24 looked at their tap records, having looked at, you  
25 know, what's available, I feel confident sitting

1 here today, and I think if you were to ask them,  
2 too, the municipal system in St. Louis and Kansas  
3 City would have a larger number of lead service  
4 lines present.

5 Q Based on your expert opinion, if you were  
6 a Manager of a municipal water system and you  
7 learned that MAWC was granted an AAO here, would  
8 that change your outlook on the logic of owning a  
9 municipal system?

10 A I mean, I think that's the real risk, and  
11 that's why -- I mean, this has given me a lot of  
12 sleepless nights as well with these discussions that  
13 were -- without asking questions, if we're just  
14 moving forward with what's -- what's been planned  
15 and we're socializing these costs across all  
16 Missouri-American customers, I would think one of  
17 the first things that would happen would be that  
18 this would become public knowledge, that there  
19 would be more of a -- of a discussion in the state  
20 over lead service lines.

21 At that point, I think it's reasonable --  
22 I think people would -- would question whether or  
23 not they're present in their home. I think there's  
24 a lot of room for miseducation. You could run -- I  
25 mean, in short, I think what could happen is a bank

1 run. I mean, you could -- you could incite a lot  
2 of concern.

3 If you're municipal system that has a lot  
4 of cost prohibitive costs, it might be more  
5 attractive at that point to go ahead and sell your  
6 system.

7 That has implications for the rest of  
8 customers, too. I mean, in short, we might be in a  
9 position where we're talking about, you know,  
10 privatizing the state.

11 **Q So whereas we're talking about 30,000**  
12 **service lines for MAWC's system now, to the extent**  
13 **that those municipal systems are privatized, it**  
14 **could increase dramatically from 30,000; is that**  
15 **correct?**

16 **A** If you're a city that has a dwindling tax  
17 revenue, that all of a sudden has to -- to raise a  
18 significant amount of funds to go ahead and  
19 mitigate perceived health concerns and there's an  
20 alternative option, absolutely.

21 And based off of the numbers that the  
22 company presented be in their application, which  
23 referenced the AWWA paper, in which I reprinted in  
24 my rebuttal testimony, I mean, at that point, then  
25 we're talking billions of dollars. We're not

1 talking hundreds of millions. We're talking  
2 billions.

3 So that's -- that's what gives me pause  
4 when we only have a -- what amounts to, you know, a  
5 very thin application and an expedited schedule.  
6 Let's -- there needs to be a conversation about  
7 this.

8 MR. WOODSMALL: Thank you. No further  
9 questions.

10 JUDGE PRIDGIN: All right. Thank you.  
11 Staff?

12 CROSS-EXAMINATION

13 BY MS. MERS:

14 Q Good afternoon, Dr. Marke. How are you  
15 doing?

16 A I'm good.

17 Q Okay. So you have correctly noted that  
18 340 Missouri-American and, in fact, all regulated  
19 water utilities presently are meeting the lead and  
20 copper rule, right?

21 A Yes.

22 Q Can you say that 30 years of compliance  
23 guarantees 30 years of future compliance?

24 A No.

25 Q And you were -- you were talking a little



1 bit about just kind of mechanics the sawing, the  
2 cutting, the kind of engineering behind this. Your  
3 background is you're an Economist, correct?

4 A I am.

5 Q Okay. And have you ever participated in  
6 or watched the water service line replacement?

7 A On video.

8 Q On video. Okay. So then from that  
9 experience, do you have any evidence to doubt the  
10 expert testimony of Staff Witness Jonathan Dallas  
11 or Missouri-American's own testimony that,  
12 oftentimes, a portion of the customer -- part of  
13 the service line is replaced by Missouri-American  
14 to complete a main replacement?

15 A If I may restate the question.

16 Q Yes. Yes.

17 A You're asking me if I doubt Mr. Dallas's  
18 testimony that Missouri-American replaces partial  
19 service lines?

20 Q As part of -- not even including the lead  
21 service line. But as a part of their normal  
22 ongoing main replacement program that sometimes  
23 there is a portion of the customer -- part of the  
24 service line that -- to reconnection to the water  
25 main must be replaced?

1 A Yes.

2 Q Okay. And to your knowledge, has OPC ever  
3 filed a complaint alleging that practice of  
4 Missouri-American replacing a portion of the  
5 customer-owned service line to complete a main  
6 replacement is a violation of their tariff?

7 A I can't speak to that.

8 Q Do you believe that practice is a  
9 violation of their tariff?

10 MR. OPITZ: Objection. Calls for a legal  
11 conclusion.

12 JUDGE PRIDGIN: I'll overrule. He can  
13 answer if he knows. And if not, he can say he  
14 doesn't know.

15 A I don't know.

16 Q (By Ms. Mers) Okay. So you don't -- you  
17 don't have an opinion on that. In your testimony,  
18 it seems at some points that you are stating that  
19 Missouri-American should abandon its proposal to  
20 replace lead service lines during main replacement  
21 projects and, instead, agree to OPC's pilot  
22 program.

23 But in other portions, it almost seems  
24 like you say Missouri-American should continue the  
25 lead service line replacement while also pursuing

1     **OPC's recommendation.**

2                 **So just to clarify, does OPC support or**  
3     **oppose Missouri-American undertaking the lead**  
4     **service line replacement during main replacement**  
5     **projects at this time?**

6             A     I want to be perfectly clear on this.

7             **Q     Sure.**

8             A     Okay? Our proposal is replacing the full  
9     lead service lines. We're doubling their budget.  
10    If -- if the company feels comfortable with  
11    throwing out larger numbers, we have been  
12    forthright from the very beginning, please provide  
13    some evidence for that.

14            **Q     And to -- just to clarify, though, are you**  
15    **supporting without OP -- I mean, if -- if the**  
16    **company was not willing to go through with your**  
17    **pilot program, are you still in support of their**  
18    **replacement of main projects?**

19                 **Or is it only in the context of your pilot**  
20    **project that you think it's acceptable to replace**  
21    **the lead service lines?**

22            A     So we've had several witnesses come up  
23    here, and I've heard answers like, That was a wild  
24    guess, I don't know.

25            **Q     Do you -- I think it's almost a yes or no**

1 question if you support --

2 A Do we support the company's application?

3 We do not.

4 Q Okay. So you were proposing, then, that  
5 the company stop lead service line replacements and  
6 perhaps until their tariff is amended -- amended to  
7 allow in OPC's opinions?

8 A I can't speak to legal conclusions on  
9 that.

10 Q Okay. Would that entail, then, the  
11 company going back and re-excavating lead service  
12 lines that they didn't replace during that period  
13 of time?

14 A I'm sorry. Could you please restate that?

15 Q Sure. If the lead service line program is  
16 stopped --

17 A Right.

18 Q -- until -- and OPC is -- it seems like  
19 they're arguing the tariff is amended, does that  
20 then mean that OPC recommends that the company goes  
21 back and re-excavates the lead service lines that  
22 aren't replaced during this period of time?

23 A That it re-excavate the lines it has not  
24 replaced?

25 Q So if the main is open to replace those

1     lead service lines --

2           A     Right.

3           Q     -- and, you know, say it's happening  
4     today --

5           A     Right.

6           Q     -- you say it's a tariff violation. So in  
7     the future, would OPC recommend that that line be  
8     re-dug up and replaced in the future?

9           A     With a lead line?

10          Q     No, no. Instead of replacing the lead  
11     service line while it's -- you know what? I can,  
12     can I withdraw that question.

13                 So I see from your resume -- and,  
14     actually, I think I've been involved in these cases  
15     with you -- you've been involved in a variety of  
16     different utility programs, some new such as the  
17     MEEA. There's been the electric vehicle programs,  
18     you know, different emerging issues.

19                 In your experience, is it unusual for  
20     tariff changes to occur as a result of a new  
21     program service or responsibility on a utility's  
22     behalf?

23          A     Is it my experience that -- and I  
24     apologize. Is it my experience that it's unusual  
25     for tariffs to change?

1           Q    As a result of a -- a new program.  So,  
2   for example, did -- MEEA programs require changes  
3   to tariff sheets and new tariffs.

4           A    They do.

5           Q    Okay.  And that's also probably true of  
6   the -- many low income programs offered that  
7   require some tweaks to tariff sheets, correct?

8           A    Sure.

9           Q    And were you part of the electric vehicle  
10  case, ET-2016-0246?

11          A    I was.

12          Q    And in that case, as part of that order,  
13  it's correct that the Commission ordered Ameren  
14  Missouri to incorporate language to clarify  
15  electric vehicle charging was not sale for resale,  
16  correct?

17          A    That's my understanding.

18          Q    And so you agree the Commission can  
19  approve changes to new tariff sheets that result  
20  from new program services or the like?

21          A    I -- I don't feel comfortable speaking to  
22  that --

23          Q    Okay.

24          A    -- given my position.

25          Q    Okay.  Fair enough.  Okay.  So then you

1 don't feel comfortable stating that the Commission  
2 can approve or order Missouri-American to change  
3 tariff sheets as appropriate or clarify the lead  
4 service line replacement program?

5 A I would have to seek advice from Legal  
6 Counsel on that.

7 Q Sure. Would you be able to agree or  
8 disagree that Missouri-American could file a tariff  
9 rule if it does not alter existing service line  
10 ownership or maintenance protocol but could  
11 recognize extraordinary approved company service  
12 line activity?

13 MR. OPITZ: Objection. Calls for a legal  
14 conclusion.

15 JUDGE PRIDGIN: Again, I'll overrule. He  
16 can answer if he knows. And if he doesn't, he can  
17 say so.

18 A I -- I think the same response.

19 Q (By Ms. Mers) Sure. I think, though,  
20 from -- from the answers you have given me that --  
21 would you agree that a tariff sheet as OPC claims  
22 that does not allow this replacement service,  
23 that's not an immutable, unchangeable condition,  
24 correct?

25 A I'm sorry.

1           Q    A tariff sheet is not an immutable,  
2    unchangeable condition, correct?  It can be  
3    changed.

4           A    A tariff sheet be changed.

5           Q    And since the Commission can order or  
6    approve a change in the tariff to capture a lead  
7    service line replacement program, therefore, OPC's  
8    allegations to the tariff would not be fatal to the  
9    case, correct?

10           MR. OPITZ:  Objection.  Compound question.

11           JUDGE PRIDGIN:  Overruled.

12           A    I think I would have to seek Legal Counsel  
13    on that as well.

14           Q    (By Ms. Mers)  Dr. Marke, your testimony  
15    outlines the pilot program that allows  
16    Missouri-American to replace customer-owned lead  
17    service lines, correct?

18           A    That's correct.

19           Q    Can you point to the page in your  
20    testimony where you propose new tariff language?

21           A    I don't believe there is any.

22           Q    So if Missouri-American's proposed  
23    replacement program is a violation of tariff,  
24    wouldn't OPC's then also be a violation of the  
25    tariff?



1 MR. OPITZ: Objection. Calls for a legal  
2 conclusion.

3 JUDGE PRIDGIN: Overruled. He can answer  
4 if he knows. And if not, he can say so.

5 A I don't know.

6 Q (By Ms. Mers) So you proposed a pilot  
7 program, but you can't tell me if it's a violation  
8 of the tariff?

9 A I proposed a pilot program. I cannot  
10 speak to the legal merits of it. If the question  
11 is about the policy behind it, the justification,  
12 rationale, I'd be more than happy to --

13 MS. MERS: Okay. I think I have no  
14 further questions. Thank you.

15 JUDGE PRIDGIN: All right. Thank you.  
16 Missouri-American?

17 MR. COOPER: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MR. COOPER:

20 Q You referenced both in your testimony and  
21 earlier in cross-examination the original lead  
22 copper rule, correct?

23 A That's correct.

24 Q And I believe you stated that the original  
25 rule would require replacement of customer-owned

1 service, correct?

2 A Correct.

3 Q And is -- so it was EPA's desire that the  
4 entire lead service line be replaced, correct?

5 A That's my understanding.

6 Q In terms of your -- your pilot study that  
7 you have proposed, could the State of Missouri  
8 undertake that pilot study, for example, the  
9 Department of Natural Resources?

10 A I mean, I think the State of Missouri is  
11 able to do what the State of Missouri is able to  
12 do.

13 Q And -- and if the State undertook such a  
14 study, wouldn't it be possible to -- to deal with  
15 the -- the various things that you've talked about  
16 in your testimony, the risk -- well, first off,  
17 just territorially, from border to border instead  
18 of just in one investor-owned company, you know,  
19 all aspects of lead contamination, and -- and in  
20 particular, you know, rope in those large  
21 Metropolitan areas that are served by municipal  
22 utilities that are not within the Commission's  
23 jurisdiction? You know, you mentioned, I think,  
24 maybe we did as well earlier St. Louis, Kansas  
25 City, Springfield, Columbia. Wouldn't that be a

1 more global study than the Public Service  
2 Commission attempting to do that?

3 A I think the Public Service Commission can  
4 enable that sort of dialogue, and I think that's,  
5 in part, what this pilot study does. I mean, the  
6 reality is this -- this is a complicated issue.

7 Q You made a statement in response to, I  
8 think, an MCEG question that approval of an AAO,  
9 and I assume what you mean is the AAO to deal with  
10 the costs incurred from January of 2017 through May  
11 of 2018 would be an unprecedented -- it would be  
12 unprecedented to move forward in that fashion. Do  
13 you remember that?

14 A I do.

15 Q Okay. As OPC has also pointed out, I  
16 think in its testimony, these issues are going to  
17 be discussed again within the rate case to some  
18 extent, correct?

19 A Yes.

20 Q And the program we're talking about --  
21 and, again, I think OPC has made the point over and  
22 over, they refer to this as a 10-year program,  
23 correct?

24 A That's what they put forward, yes.

25 Q But you don't think they can get to all

1     these lines within ten years, correct?

2           A     I think the number of lines that are being  
3     proposed were understated.

4           Q     How many opportunities do you think that  
5     Commission is going to have to take a look at this  
6     program in the ten years or ten years plus if  
7     you're right that they're not able to get to it in  
8     ten years? More than one rate case likely,  
9     correct?

10          A     Yes.

11          Q     And potentially other types of -- of cases  
12     as well, correct?

13          A     Yes.

14          Q     I think you also made a statement, this  
15     was in response to staff, that you wanted to be  
16     very clear that -- that you were, I think in favor  
17     of replacing full -- or full lead service line  
18     replacements. Did I have that correct?

19          A     Within the context of our study, yes, I  
20     am.

21          Q     But without, I guess, in this case any  
22     treatment of the accounting for the cost of those,  
23     correct?

24          A     I would suggest you direct the accounting  
25     questions to Mr. Hyman.

1           Q    Okay.  But I think you made this statement  
2   earlier that it's OPC's position that as a part of  
3   your pilot study proposal that the company should  
4   dismiss -- well, tell me how you -- how you see us  
5   moving forward.

6           Are you foreseeing that the company  
7   dismisses this current application to get to your  
8   pilot study?

9           A    I -- I understand what you're saying.

10          Q    Yes.

11          A    And then refilled it in the context of the  
12   rate case.  Yes.

13          Q    Some sort of motion within the rate case?

14          A    Absolutely.

15          Q    And the rate case operational law date is  
16   not until end of May sometime.  Would you agree  
17   with that?

18          A    That's correct.

19               MR. COOPER:  I think that's all the  
20   questions I have for now, your Honor.

21               JUDGE PRIDGIN:  All right.  Thank you.  
22   Bench questions?  Mr. Chairman?

23                               CROSS-EXAMINATION

24   BY CHAIRMAN HALL:

25          Q    Good afternoon.

1           A    Good afternoon.

2           Q    There's nothing that would prevent the  
3   Commission from requiring some type of study  
4   consistent with -- or similar to the pilot study  
5   that -- that you proposed, order that in  
6   conjunction with granting an AAO; is that correct?

7           A    Chairman Hall, I --

8           Q    The two -- the two don't preclude each  
9   other?

10          A    I can't speak to the AAO.  And I'm not  
11   trying to be deaf to that.  I mean, I would -- I  
12   really would direct those questions to Mr. Hyneman.

13                But our study does propose to go ahead and  
14   -- and have a lump sum of money for the company,  
15   get recovery of those costs and to move forward  
16   with pursuing some of the questions that we've  
17   outlined.

18                So we -- we feel like we've -- we've  
19   offered up a fairly detailed frame work from --  
20   from which everybody can come out happy.

21          Q    Well, I guess my point -- and maybe I'll  
22   inquire of Mr. Hyneman about it.

23                My point is that it doesn't seem to me  
24   that there is anything in the pilot study itself  
25   that would require that the AAO not be granted,

1     that -- that, in fact, we -- we could grant the  
2     AAO, and, in addition to that, require some type of  
3     study consistent with the pilot study. But if you  
4     can't answer that question, I'll address it to  
5     Mr. Hyneman.

6             Okay. You were in the hearing room when  
7     there's -- when there was discussion about private  
8     organization of projects?

9             A     (Witness nods head.)

10            Q     What does is your pilot study recommend  
11     with regard to that issue?

12            A     So our -- our -- our pilot study doesn't  
13     take a position whether we should prioritize -- as  
14     I look at it right now, Staff and the company have  
15     largely supported replacing service lines as the  
16     main -- in conjunction with main replacement.

17                     DED has raised, you know, the issue of  
18     whether or not, you know, low income customers need  
19     to be considered.

20                     I think from our -- from our perspective,  
21     if, if the basis for this is public health, all the  
22     literature points to children and pregnant women  
23     being the main at risk target groups here.

24                     To the extent that schools are the focus,  
25     that has been the enabling policy for a lot of

1     municipal systems across the country, that that  
2     should be targeted.

3             I would say that if we're going that  
4     route, then that changes the cost structure on  
5     this. So it's -- I mean, this is an important  
6     conversation to happen because even if the  
7     Commission grants the AAO, even if we move forward  
8     with exactly what the company has proposed, all  
9     these other outstanding questions still are there.  
10    They don't go away.

11            We -- as I hear it, we don't necessarily  
12    have a disclosure policy in place here. What I  
13    heard Mr. Aiton say is if somebody calls up, we'll  
14    tell them whether or not it's on their tap record.  
15    But it's their responsibility to look at that.

16            When I hear that, my fear is people might  
17    be taking that the wrong way. And it could incite  
18    a lot of potential problems.

19            **Q     Okay. Well, let -- come back to my**  
20    **question.**

21            **A     Okay.**

22            **Q     What is your position on whether or not**  
23    **there should be some type of collaborative**  
24    **established to help the -- the company and the**  
25    **Commission prioritize these lead service line**



1 replacement projects?

2 A I think we should absolutely be having a  
3 conversation. I think the -- the setting that  
4 we're in right now does not enable that. It's  
5 doesn't -- you know, this -- having a confined  
6 regulatory setting doesn't -- and the fact that we  
7 have -- it's absent key stakeholders doesn't allow  
8 that.

9 Q Okay. So -- so you would support --

10 A I'd support it.

11 Q -- that type of collaborative. And would  
12 you recommend that the -- members of your Advisory  
13 Committee as set forth on page 6 of your direct  
14 testimony, are those the -- the individuals or the  
15 entities that should be on such a collaborative?

16 A These are individuals -- yes, that -- that  
17 have expressed interest that I've reached out to.

18 CHAIRMAN HALL: I have no further  
19 questions. Thank you.

20 JUDGE PRIDGIN: Thank you. Further Bench  
21 question?

22 COMMISSIONER STOLL: No, Judge. Thank you  
23 for your testimony.

24 JUDGE PRIDGIN: Recross based on Bench  
25 questions? MECG?

1 MR. WOODSMALL: No questions.

2 JUDGE PRIDGIN: Thank you. Staff?

3 MS. MERS: No questions. Thank you.

4 JUDGE PRIDGIN: Missouri-American?

5 MR. COOPER: No questions.

6 JUDGE PRIDGIN: Redirect?

7 MR. OPITZ: Yes, judge. Just a moment. I  
8 apologize.

9 RE CROSS EXAMINATION

10 BY MR. OPITZ:

11 Q Dr. Marke, on questions from Counsel from  
12 Missouri-American, there was a question about the  
13 estimates of the company, and I believe -- do you  
14 recall those questions that --

15 A I do.

16 Q And I recall your answer being that you  
17 believed them to be understated. Can you tell me  
18 why you believe those estimates are understated?

19 A The company relies on tap records and I  
20 guess localized knowledge I guess would be the best  
21 way to describe it across districts.

22 Based off our conversation with University  
23 of Michigan who was brought in to go ahead and --  
24 they partnered up with Google, in fact, to go ahead  
25 and identify the number of lead lines in the Flint

1 area.

2 The initial estimates were grossly  
3 understated. In -- in Flint, it was nearly triple  
4 what they had initially thought.

5 We found out that it's -- you know, again,  
6 the same study, the researchers. We're able to go  
7 ahead and use empirical data and posit that high  
8 concentrations of elevated lead in water weren't  
9 necessarily connected or correlated with lead  
10 service lines.

11 So, again, that internal plumbing, that  
12 internal premise plumbing is -- is still at risk.  
13 And that's, from our perspective, a real concern  
14 for two reasons.

15 I mean, one, that we don't want to give  
16 customers the false sense of security that, you  
17 know what, we replaced your lead line, it's all  
18 good. Everything's fine.

19 And the second thing is, is this. Any  
20 disruption is potential hazardous. Whether we're  
21 doing partial or we're doing full that leaching,  
22 that -- that -- that period there where you might  
23 be -- you might have a high concentration of lead  
24 exposed is present.

25 So my fear is that we're going to drop

1 hundreds of millions of dollars and not get results  
2 that we want. And the company or anybody else in  
3 this case hasn't been able to put forward evidence  
4 to show me otherwise. Whether that's secondary,  
5 primary, the company's own primary pilot studies.

6 So that's -- that's what I feel like is  
7 lost in this translation and in this dialogue.

8 Q Dr. Marks, Staff Counsel asked you a  
9 series of questions about tariffs. And I think you  
10 recall those questions?

11 A I do.

12 Q And I think you concede that tariffs do  
13 change sometimes?

14 A Yes.

15 Q In your experience, for example, with  
16 MEEA, did the company begin implementing that  
17 program before the tariffs were modified and in  
18 effect?

19 A No.

20 Q And, for example, with the tariff change  
21 related to MEEA, was there specific statutory  
22 language underlying that change?

23 A There was.

24 Q And you didn't propose tariffs in your  
25 testimony in this case; is that correct?

1           A    That's correct.

2           Q    You're not proposing that the pilot would  
3 occur in this case at all; is that right?

4           A    That's -- that's correct.

5           Q    Staff Counsel was talking to you about I  
6 think the -- whether the replacement would  
7 continue. Do you recall those questions during the  
8 pilot period?

9           A    Yes.

10          Q    And you started to give an answer where  
11 you were talking about, you know, the kind of  
12 testimony that you had heard today before you were  
13 cut off. Was there any other information you  
14 wanted to add related to that, I think?

15          A    I would -- I would just, you know, refer  
16 back to the record. When the witness for the  
17 Department of Economic Development was asked -- or  
18 was posited questions about low income, there was  
19 no answer.

20                When Staff was -- was crossed over  
21 specific questions over the testing or where other  
22 testimony systems were going, we got ambiguous  
23 answers.

24                The -- I think it's appropriate to go  
25 ahead and -- and have a setting where we sit down

1 across the table and just have a frank conversation  
2 about some of the risks and how we can go ahead and  
3 leverage this into an opportunity or something that  
4 all parties can share and benefit from.

5 And to the extent that our -- our fifth  
6 policy string has spoken in ancillary  
7 considerations that we've had with outside parties,  
8 institutions, Universities that have expressed  
9 interest in -- in funding research, I think we're  
10 missing a golden opportunity here.

11 Q So Counsel for Staff asked you a couple  
12 questions about past compliant guarantee -- not  
13 guaranteeing future compliance. Is there anything  
14 -- do you recall those questions, first of all?

15 A I did.

16 Q Is there anything that the Commission  
17 should know about past practice and future --  
18 guaranteeing future compliance?

19 A When Public Counsel sat back and looked at  
20 sort of a worst case scenario here, we tried to  
21 figure out, you know, how much risk exposure our  
22 ratepayers are looking at in terms of public  
23 health.

24 The default answer when other parties have  
25 pointed to this was this Flint, Michigan. I was

1 shocked going through the -- the Flint information  
2 to the point where, you know, I contacted the -- I  
3 contacted Flint, Michigan, and asked, Is this  
4 really what I'm seeing?

5 I would have expected lead levels, blood  
6 lead levels, water lead levels to be through the  
7 roof. And the empirical evidence doesn't suggest  
8 that that's the case.

9 I'm not sitting here saying that what  
10 happened in Flint was -- was wrong or right or  
11 anything else. But that gives me enough pause to  
12 sit back in the -- before we jump to conclusions,  
13 we should look at what we're approving.

14 Q All the way back to MEEG, he was asking --  
15 he had asked you a question, and your answer  
16 referenced Madison, Wisconsin. Do you recall those  
17 series of questions?

18 A I do.

19 Q And in one of your responses, you  
20 referenced, you know, looking at the studies. What  
21 do you know about the studies that have taken place  
22 regarding full lead service line replacement?

23 A My surrebuttal speaks to it, to a large  
24 extent. But there's a lot of research about lead.  
25 There is much, much, much less research about lead

1 line replacement, the exposure, risk exposure  
2 that's present there, or the link between lead in  
3 the water and elevated blood lead levels.

4 It's not -- speaking with the State's  
5 epidemiologist, speaking with Health & Human  
6 Services that are charged with every day working  
7 with lead, lead in water, lead service lines are  
8 relatively low on the priority list.

9 There's an opportunity cost here at the  
10 end of the day. And at hundreds of millions of  
11 dollars and in the process of a 45 percent rate  
12 increase with St. Louis -- in St. Louis County  
13 right now, I think we would be doing ourselves a  
14 disservice by not at least asking tough questions.

15 MR. OPITZ: That's all I have. Thank you.

16 JUDGE PRIDGIN: All right. Dr. Marke,  
17 thank you very much. You may step down.

18 DR. MARKE: Thank you.

19 JUDGE PRIDGIN: And before we get to  
20 Mr. Hyneman, let me, since we're getting close to  
21 5:00, I -- we do have a whole 'nother day set aside  
22 for hearing. And I kind of hate to come back for  
23 one witness. But then again, I hate to go late if  
24 we have a whole 'nother day. But let me see -- I'm  
25 guessing Counsel is going to have quite a bit of



1 cross-examination. Let me check with Counsel.

2 MR. WOODSMALL: I have one minute. I  
3 won't be slowing this witness down?

4 MR. COOPER: Very brief cross.

5 JUDGE PRIDGIN: Very brief. All right.  
6 Rock an roll. Mr. Hyneman, come forward to be  
7 sworn. If you'll raise your right hand to be  
8 sworn, please.

9 CHARLES HYNEMAN,  
10 being first duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. OPITZ:

14 JUDGE PRIDGIN: Sir, you may have a seat.  
15 And, Mr. Opitz, when you're ready, sir.

16 MR. OPITZ: My apologies, Judge.

17 Q (By Mr. Opitz) Would you please state and  
18 spell your name for the record?

19 A It's Charles Hyneman, H-y-n-e-m-a-n.

20 Q And where are you employed and in what  
21 capacity?

22 A I'm employed at the Missouri Office of the  
23 Public Counsel as Chief Accountant.

24 Q Did you prepare pre-filed testimony in  
25 this case that will be marked as Exhibit 17, your

1 direct testimony, and Exhibit 18, your surrebuttal  
2 testimony?

3 A Yes.

4 Q If I were ask you the questions posed in  
5 that testimony, would your answers be the same?

6 A They would.

7 Q And that testimony is true and accurate to  
8 the best of your knowledge and belief?

9 A Yes, it is.

10 MR. OPITZ: Judge, at this time, I would  
11 offer Exhibits 17 and 18 into evidence.

12 JUDGE PRIDGIN: Any objections? Hearing  
13 none, 17 and 18 are admitted.

14 (Exhibits 17 and 18 were offered and  
15 admitted into evidence.)

16 MR. OPITZ: Tender the witness for  
17 cross-examination.

18 JUDGE PRIDGIN: Thank you.  
19 Cross-examination, MECG?

20 MR. WOODSMALL: Yes. One minute.

21 CROSS-EXAMINATION

22 BY MR. WOODSMALL:

23 Q Mr. Hyneman, you discussed in your  
24 testimony carrying costs for the AAO; is that  
25 correct?

1           A    That is correct.

2           Q    And there's been several terms thrown  
3   about, and I just want to get some clarification.  
4   Are you familiar with the term short-term debt  
5   rate?

6           A    Yes.

7           Q    And can you tell me what that is?

8           A    Usually, the -- well, short-term debt rate  
9   is the rate that the company is charged to finance  
10   construction projects and -- it's usually  
11   eventually rolled into long-term debt.

12          Q    Okay. And can you tell me what  
13   Missouri-American's current short-term debt rate  
14   is?

15          A    In -- in Missouri-American's application,  
16   on their cost of capital worksheets, they put that  
17   the rate at 2 percent.

18          Q    Okay. And can you tell me what is their  
19   full rate of return, including an equity and debt  
20   component?

21          A    Well, I did the calculation, and the gross  
22   rate of return after tax return --

23          Q    Well, let's -- we'll move on to that. Can  
24   you tell me just what their rate of return is?  
25   Would you accept 8.07? I took that from the rate

1     **case.**

2           A     That sounds familiar.   Yes.

3           **Q     Okay.**

4           A     And that -- when you gross up the equity  
5     piece of that, it turns into 11.5 percent.

6           **Q     And you have to gross up the equity**  
7     **component of that because that's considered profit,**  
8     **and the company has to pay income taxes on that**  
9     **portion; is that correct?**

10          A     That's correct.   The -- the debt piece of  
11     that is tax -- is tax deductible.   So there's no  
12     tax gross up.   But the equity piece being profit is  
13     taxed.

14          **Q     So, currently, the difference between, --**  
15     **Staff and Public Counsel both say carrying costs**  
16     **short-term debt rate; is that correct?**

17          A     Yeah.   I think there's somewhat of a  
18     difference from -- my understanding of Staff's  
19     positions today, which gave me some concern, is  
20     that they're saying the short-term debt rate right  
21     now in an AAO and then possibly changing the rate  
22     case.   OPC's position is that the short-term debt  
23     rate would apply throughout the project.

24          **Q     But the differences between OPC's**  
25     **short-term debt rate carrying costs of 2.0 and the**

1 company's proposal is approximately 10 percent  
2 difference; is that correct?

3 A Yes.

4 Q Okay. And real briefly, you heard  
5 earlier, I believe, Mr. LaGrand, I believe, said  
6 that the company currently as 470,000 customers.  
7 Are you familiar with that?

8 A Yes.

9 Q And can you tell me how many of those are  
10 residential customers?

11 A Yes. I had somebody look into that. And  
12 as the December 2016, that number was 426,201.

13 Q Okay. And just for purposes of round  
14 numbers, the company's estimating 30,000 service  
15 line replacements; is that correct?

16 A Yes.

17 Q At \$6,000 a service line, that's a total  
18 of \$180 million; is that correct?

19 A Yes.

20 Q If you spread that -- and let's assume  
21 that's all kept within the residential class, just  
22 for purposes of a hypothetical. If you spread that  
23 180 million dollars over the 426,000 residential  
24 customers, we're talking about each customer  
25 picking up \$422. Would you accept that subject to

1     **check?**

2           A     Subject to check, yes.

3           MR. WOODSMALL:   Thank you.   No further  
4     questions.

5           JUDGE PRIDGIN:   Thank you.   Cross from  
6     Staff?

7                               CROSS-EXAMINATION

8     BY MS. MERS:

9           Q     I -- I guess, Mr. Hyneman, to start out,  
10    the \$422 in your opinion, that last hypothetical,  
11    is that a year or over a period of ten years or --  
12    or what time frame is that \$422 over? I know it  
13    wasn't your hypothetical.

14          A     In fact, I want to calculate that number  
15    again. Subject to check, I want to --

16          MR. WOODSMALL:   Yeah.

17          A     Subject to check means I could verify it  
18    later.

19          MR. WOODSMALL:   I get it.   Sure.

20          A     Could I get that number again, the basis  
21    of that number? 180 million.

22          MR. WOODSMALL:   180,426,000 customers.

23          A     Yes. \$422.

24          Q     **(By Ms. Mers) And now, subject to --**  
25    **running that number, is that a year or amortized**

1     **over ten years or -- or --**

2           A     Well, that number is -- is simply the  
3     total investment, just the total plant investment,  
4     not return, divided by all residential customers.  
5     So that -- that's what it is.

6           Q     **An usually, they -- they -- it's not a**  
7     **lump charge to consumers, correct? It's usually**  
8     **divided out over a few years, correct?**

9           A     Well, I mean, that number is 180,000  
10    that's going to be recovered. And depending on the  
11    amortization period, I think it might be 65 years,  
12    but that -- during that 65 years, you'll have that  
13    180,000 and have the rate of return on top of that  
14    11.5 that they're proposing. And so that's going  
15    to be the cost.

16          Q     **Okay. Would you agree that Missouri**  
17    **Public Service Commission is the entity that has**  
18    **the responsibility for setting regulatory**  
19    **accounting requirements from Missouri's**  
20    **jurisdictional investor-owned public utilities?**

21          A     The Missouri Public Service Commission has  
22    promulgated a rule that requires Missouri utilities  
23    to comply with the Uniform System of Accounts.

24          Q     **Okay. So yes. So in setting the**  
25    **regularity accounting requirements for Missouri**

1     **utilities, is the Missouri Commission obligated to**  
2     **follow generally accepting -- accepted accounting**  
3     **principles?**

4           A     Well, yes, because the USOA follows  
5     generally accepted accounting principles. And the  
6     Commission orders the use of those.

7           Q     **And --**

8           A     To answer that question.

9           Q     **Can you cite to a rule, statute or policy**  
10    **that you're depending on for your answer?**

11          A     Well, I know for a fact that the USOA is  
12    based on GAAP. In fact, I think the FERC has  
13    stated that it tries to keep up with GAAP and its  
14    accounting requirements.

15          Q     **So you -- you can't cite to anything from**  
16    **the Missouri Public Service Commission, though,**  
17    **correct that --**

18          A     Well, I would say if -- a utility -- a  
19    utility is required to comply with GAAP for  
20    accounting purposes. If they don't, they'd be  
21    subject to serious legal repercussions, fines and  
22    all kinds of things.

23                I don't think the Commission would think  
24    that's a good idea. So do I think the Commission  
25    wants its utilities to comply with GAAP? I do.



1           Q    Would you agree that it's possible for the  
2   Commission to use different standards to govern the  
3   booking of deferrals by utilities under its  
4   jurisdiction for regulatory -- regulatory  
5   accounting purposes than the GAAP standards used to  
6   govern whether utilities can reflect the cost  
7   deferrals on their financial statements?

8           A    Not in an accounting case. In a rate  
9   case, the Commission basically determines that.

10          Q    So you say -- so to the answer is no then?

11          A    No. I'm giving you my answer.

12          Q    It's a yes or no question, please.

13          A    I -- can you repeat the question?

14          Q    Would you agree that it is possible for  
15   the Commission to use different standards to govern  
16   the booking of deferrals by utilities under its  
17   jurisdiction for regulatory accounting purposes  
18   than the GAAP standards used to govern whether  
19   utilities can reflect cost deferrals on their  
20   public financial statements?

21          A    What are some examples of different  
22   standards?

23          Q    For example, the probability of recovery  
24   standard.

25          A    And may I put that answer in the context

1 of this case? The Commission in this case can --  
2 even though it's not necessary, they can say, You  
3 can book these deferrals in Account 186.

4 That 186 is -- is no connotation for  
5 regulatory asset. If the company books something,  
6 for example, electric or gas utility account 182.3,  
7 Regulatory Assets, and the Commission orders them  
8 to do that, then the Commission is saying, We, the  
9 Commission, determined these costs are probable of  
10 recovery. And that standard means it is likely to  
11 occur. Rate recovery is likely to occur.

12 And I -- and I think the Staff has put the  
13 Commission in an unfortunate condition for many  
14 years by telling them, Yeah, you're saying you're  
15 not doing any rate recovery, but you actually are.  
16 You're saying that these costs are probable  
17 recovery. I think that's unfortunate.

18 **Q Would you agree that it's possible for a**  
19 **utility -- that it's possible a utility may not be**  
20 **allowed to reflect a cost of deferral on its public**  
21 **financial statements that it was authorized to book**  
22 **for regulatory accounting purposes by the Missouri**  
23 **Commission?**

24 **A** And, again, can you state that question  
25 again?

1           Q    Sure. And it should be just a yes or no  
2   question. So would you agree that it is possible  
3   that a utility may not be allowed to reflect a cost  
4   deferral on its public financial statements that it  
5   was authorized to book for regulatory accounting  
6   purposes by the Missouri Commission?

7           A    Again, there is -- it's not a yes or no  
8   because it's depends.

9           Q    Okay.

10          A    If the Commission says --

11          Q    Your Counsel can help redirect you. In  
12   setting customer rates for Missouri utilities, is  
13   the Missouri Commission obligated to follow  
14   generally accepted accounting principles in  
15   determining utility revenue requirements?

16          A    You're speaking a little fast, so I'm  
17   going to --

18          Q    I'm sorry. I can repeat the question?

19          A    Yeah, if you would.

20          Q    Okay. I have -- I apologize?

21          A    Yes, please.

22          Q    In setting customer rates for Missouri  
23   utilities, is the Missouri Commission obligated to  
24   follow general accepted accounting principles in  
25   determining utility revenue requirements?

1           A     In a rate setting process, no.

2           Q     Okay. I -- I've got a few. I apologize.  
3     Just one second. So you're saying that there are  
4     no provisions of the USOA that are inconsistent  
5     with GAAP?

6           A     I'm not saying that. One example is I  
7     think the USOA may allow bad debt expense to be  
8     recorded on a net write-off basis and may -- and I  
9     think GAAP may or used to require an accrual basis.  
10    There may be some minor difference, especially in  
11    lease accounting.

12                But I know that the FERC goes to great  
13    efforts to make sure that USOA is compliant with  
14    GAAP.

15          Q     And is the treatment of the equity  
16    component of AFUDC and USA -- USOA another example  
17    of an inconsistency with GAAP?

18          A     No. Because ASC980 is GAAP. And ASC980  
19    reflects how Commissions treat it. So I would say  
20    it's entirely consistent with GAAP.

21                MS. MERS: Okay. No further questions.

22                JUDGE PRIDGIN: Thank you. Cross from  
23    Missouri-American?

24                MR. COOPER: Thank you, your Honor.

25                               CROSS-EXAMINATION

1 BY MR. COOPER:

2 Q Mr. Hyneman, do you agree with the  
3 statement that an AAO case is not an appropriate  
4 case to determine any aspect of future rate  
5 recovery from the cost at issue?

6 A Yes.

7 Q And earlier in response to Mr. Woodsmall's  
8 question, I believe that you said that your  
9 proposal as to the -- the use of short-term debt as  
10 the carrying cost is not just for the purpose of  
11 this case. It's for the entire project, correct?

12 A That would be our proposal. Right. And  
13 we're recommending that -- there's no need for an  
14 AAO case here. We're proposing in a rate case that  
15 we would propose this rate-making treatment.

16 Q Okay. And we're not in the rate case,  
17 though, here today, right?

18 A Right. We are actually in a rate case.  
19 But this hearing is -- is an AAO case. But you and  
20 OPC and Staff are in a rate case.

21 Q But today, we're not in that rate case?

22 A Correct.

23 Q Mr. Woodsmall also -- he utilized the  
24 number, I think, 180 million, which you -- you were  
25 referring to as \$180,000 at some point. But the

1     \$180 million is simply an extrapolation of 30,000  
2     lead service lines times 6,000, correct?

3           A     It's the company's numbers we're using,  
4     yes.

5           Q     And that is assuming that it -- that the  
6     company is able to do is on its schedule, a 10-year  
7     number, correct?

8           A     That's the company proposal.

9           Q     And perhaps OPC thinks it will take longer  
10    than ten years, correct?

11          A     I don't know. I mean, Dr. Marke may have  
12    a different opinion on that. I -- I don't know.

13          Q     So here's my question. There's not going  
14    to be any 180 million on this issue dealt with in  
15    the pending Missouri-American rate case, is there?

16          A     No. You -- that's over a 10-year period.

17          Q     You talked about the Commission's adoption  
18    of the USOA. Would you agree with me that the  
19    Commission adopts the USOA utilizing authority from  
20    the statutes that give it authority to direct how  
21    utility costs are going to be booked and accounted  
22    for?

23          A     I believe that's true.

24          Q     And I think more than once you referred to  
25    FERC keeping up with GAAP. When we talk about

1     **Missouri-American, we're talking about the NARUC**  
 2     **USOA, not the FERC USOA, correct?**

3             A     Correct.

4             MR. COOPER:   That's all the questions I  
 5     have for right now.

6             JUDGE PRIDGIN:   All right.   Thank you.  
 7     Bench questions?   Mr. Chairman?

8             CHAIRMAN HALL:   Thank you.

9             CROSS-EXAMINATION

10     BY CHAIRMAN HALL:

11            Q     **Do you believe that it was necessary for**  
 12     **the company to get a ruling from the Commission**  
 13     **before it booked its expenses in Account 186?**

14            A     No.   It -- in fact, it is never required  
 15     for a utility to get permission from this  
 16     Commission to book a cost, to defer a cost.

17            Q     **In Account 186?**

18            A     In Account 1 -- any -- any -- basically,  
 19     any -- any regulatory asset or deferred debit  
 20     account, it's -- it's no need to get Commission  
 21     approval for that.

22            Q     **Well, if they wanted to book it as a**  
 23     **regulatory asset, would that require Commission**  
 24     **approval?**

25            A     No.   The Commission has no influence or

1 impact on regulatory assets. The -- the  
2 classification of a regulatory asset is solely made  
3 by utility management based on evidence.  
4 And that evidence would be your past rate orders or  
5 your policies or procedures.

6 Q Well, couldn't that evidence be a  
7 Commission ruling on the appropriateness of booking  
8 that as a regulatory asset?

9 A If -- if it was your policy -- and this is  
10 ASC 980. If it was your that you granted rate  
11 treatment in the AAO, then that would be  
12 sufficient. But your policy is that you don't.  
13 So, therefore, you can't grant a regulatory asset.

14 Q So your position is that it is never  
15 appropriate for a -- for a utility to come to the  
16 Commission and seek treatment of a particular  
17 expense as a regulatory asset?

18 A Correct. In fact, FERC doesn't do it.  
19 And they do it the right way. And they say --

20 Q So we've been doing it the wrong way here  
21 for a while?

22 A Yes. Many years. It's actually true.

23 Q So if the company had simply backed these  
24 expenses in at 186 and then this issue had come up  
25 in the rate case, what would -- would OPC's



1 position be that those expenses should not be put  
2 into rates?

3 A I -- I don't think so. I think we're  
4 proposing rate -- in a rate case, we would be  
5 proposing rate-making treatment.

6 Q Consistent with -- consistent with the  
7 pilot study?

8 A Yes. And I think Dr. Marke indicated we  
9 -- we would certainly be willing to discuss other  
10 components of it. I mean, we're not locked in  
11 stone. We -- there are give and take in a  
12 negotiation process, so --

13 Q So let me ask you, would you believe that  
14 it would be inappropriate or appropriate to book  
15 those expenses in Account 345?

16 A Totally inappropriate. That's a plant  
17 account. That's would violate every accounting  
18 rule, USOA, GAAP that I'm aware of.

19 Q Why is that?

20 A Because the company doesn't own it. They  
21 can't book something as a plant if they don't own  
22 it.

23 Q Are there any examples that you are aware  
24 of when a utility has booked in 345 capital  
25 expenditures related to property that it does not

1 own?

2 A I've never seen that ever take place for  
3 any utility in Missouri.

4 Q Okay. Do you believe that if the  
5 Commission were to grant the AAO in this case and  
6 determine that it's appropriate to book those --  
7 book those expenses in 186, whether or not it would  
8 be appropriate for the Commission to give any  
9 indication whatsoever to the company and other  
10 parties as to the propriety of recovering it in  
11 345?

12 A Yes. I mean, even though it's not  
13 necessary that you give them permission, they  
14 already have permission to defer those costs of the  
15 186.

16 If you gave them permission, there's  
17 nothing wrong with that. And -- and I wouldn't  
18 recommend addressing Account 345 in such a -- such  
19 an order.

20 Q What was that last piece again?

21 A I thought you asked if it would be okay if  
22 issued an AAO saying it's okay to defer costs to  
23 186 but not mention Account 345. Maybe I  
24 misunderstood.

25 Q Oh, I -- I framed it differently, but I

1 think you answered the question. You think it  
2 would be inappropriate for the Commission to  
3 provide some guidance to the company and the other  
4 parties as to the propriety of -- of recovery  
5 through 345?

6 A Oh, no. I'm sorry. I did misunderstand.  
7 No. I think it's perfectly appropriate for you to  
8 address that. Certainly.

9 Q Why is that?

10 A Well, we're in here. You don't -- this  
11 case doesn't need to take place. You're not going  
12 to be doing anything for the company that they  
13 can't do by themselves.

14 But since we're here and ask they're  
15 asking for your -- your advice, I think it's  
16 perfectly appropriate to give your advice.

17 There are certain restrictions on it by  
18 your own policies and by GAAP that you can't say  
19 you can book this to the regulatory asset account.  
20 Because that means you're telling them it's  
21 probable that you'll allow recovery in the next  
22 rate case.

23 And probably under GAAP means likely to  
24 occur. And I don't think that's what you intend to  
25 do. So other than not confer probability to

1 recovery, you could provide all assistance,  
2 guidance I think that's reasonable.

3 Q So let me ask you a couple questions that  
4 I asked Dr. Marke earlier and that he indicated you  
5 would be more equipped to answer.

6 Is there anything in the -- the pilot  
7 study that is inconsistent with the company  
8 continuing its current program?

9 A Again, I don't know of any  
10 inconsistencies. I mean, I'm just not aware of  
11 any. I mean, the pilot program would be taking  
12 place in the current rate case simultaneous with  
13 this case. So I'm not aware of any conflicts.

14 Q Are there any conflicts between the  
15 Commission ordering some type of study to similar  
16 to the pilot study in conjunction with issuing an  
17 AAO or allowing that these expenses be booked into  
18 186?

19 A No. I -- I -- I'm a believer in that the  
20 Commission has a lot of authority in that areas.  
21 And I'm not aware of any restrictions on that  
22 Commission activity.

23 CHAIRMAN HALL: Okay. Thank you.

24 JUDGE PRIDGIN: Thank you. Any further  
25 questions?

1 COMMISSIONER STOLL: No questions. Thank  
2 you.

3 JUDGE PRIDGIN: Recross based on Bench  
4 questions? MECG?

5 MR. WOODSMALL: No questions.

6 JUDGE PRIDGIN: Staff?

7 MS. MERS: Just -- just one.

8 RECROSS EXAMINATION

9 BY MS. MERS:

10 Q So, Mr. Hyneman, in your opinion, when, if  
11 ever, should a company file an AAO application with  
12 the Commission for the purpose of deferring certain  
13 costs?

14 A Normally never. I can give you an example  
15 where potentially they could. And I think this was  
16 recognized by Union Electric a few years ago where  
17 they said, you know, we know we can defer on our  
18 own to a regulatory asset. We make a  
19 determination. But because this situation is so  
20 unique, we want the Commission to weigh in on it.

21 So there's nothing prohibiting the  
22 Commission from giving guidance and advice. But  
23 it's definitely not necessary.

24 And for most AAO cases, for example,  
25 extraordinary acts, the utilities are very well

1     aware of the Commission orders and precedents, and  
2     they can book it and seek recovery in a rate case.

3             MS. MERS:   Okay.   Thank you.

4             JUDGE PRIDGIN:   All right.   Thank you.  
5     Missouri-American?

6             MR. COOPER:   No questions.

7             JUDGE PRIDGIN:   Redirect?

8             MR. OPITZ:   Yes, Judge.

9                     REDIRECT EXAMINATION

10     BY MR. OPITZ:

11             **Q    Mr. Hyneman, starting with that last**  
12     **question, aren't there some accounts that do**  
13     **require Commission approval before costs can be**  
14     **booked there?**

15             A    Yeah.   No -- not a regulatory asset  
16     account.   But I think FERC has extremity property  
17     losses or there's one type of a loss in Account 186  
18     that requires Commission approval.   And in a NARUC  
19     account -- I don't know what Commission you're  
20     talking about, but in America USA, FERC requires  
21     approval before books or costs to subaccounts.

22             **Q    Counsel for Missouri-American was asking**  
23     **you about the short-term debt carrying costs.   And**  
24     **I just wanted to make sure.   When you're talking**  
25     **about short-term debt being applied to the life of**

1    **the project, are you railroading to the pilot**  
2    **program only?**

3           A    No.  Oh, I'm sorry.  Yes.  I'm -- I'm  
4    talking about the short-term debt rate, which is --  
5    is -- I'm trying to think of the appropriate way to  
6    phrase this.  Yeah.  It would be the short-term  
7    debt rate that typically -- that -- that  
8    Missouri-American would include in their AFUDC  
9    calculations which they capitalize the plant, like  
10   under their construction projects.

11               And that would apply to accrual throughout  
12   of the amortization of the deferral in Account  
13   186.

14               MR. OPITZ:  I think that's all I have.  
15   Thank you, Judge.

16               JUDGE PRIDGIN:  All right.  Thank you.  
17   Mr. Hyneman, thank you very much.  You may step  
18   down.  That appears to be our last witness, and I  
19   believe we already have a briefing schedule set.

20               So anything further from Counsel or the  
21   Bench before we go off the record?  All right.  
22   Hearing nothing, we are adjourned.  Thank you.  We  
23   are off the record.

24               (The proceedings were concluded at 5:00 p.m. on  
25   September 27, 2017.)

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## REPORTER'S CERTIFICATE

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF OSAGE )

I, Monnie S. Mealy, Certified Shorthand Reporter,  
Certified Court Reporter #0538, and Registered Professional  
Reporter, within and for the State of Missouri, do hereby  
certify that I was personally present at the proceedings as  
set forth in the caption sheet hereof; that I then and there  
took down in stenotype the proceedings had at said time and  
was thereafter transcribed by me, is fully and accurately  
set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal on September 27, 2017.



Monnie S. Mealy, CSR, CCR #0538  
Registered Professional Reporter

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