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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Oral Arguments

August 7, 2017
Jefferson City, Missouri
Volume I

In the Matter of Missouri)
American Water Company's Request) File No.
for Authority to Implement) WR-2017-0285, et al.
General Rate Increase for Water)
and Sewer Provided in Missouri)
Service Area.)

JUDGE KIM S. BURTON, Presiding
SENIOR REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
STEPHEN M. STOLL,
WILLIAM P. KENNEY (via phone),
SCOTT T. RUPP,
MAIDA J. COLEMAN,
COMMISSIONERS

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A P P E A R A N C E S

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A P P E A R A N C E S (CONTINUED)

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

2 JUDGE BURTON: Let's go ahead and begin
3 this proceeding. Good morning, everyone. Today is
4 August 7th, 2017, and the time is currently
5 10:04 a.m.

6 The Commission has set this time for oral
7 arguments on Missouri American Water Company's
8 Motion to Establish Future Test Year In The Matter
9 of Missouri American Water Company's Request for
10 Authority to Implement a General Rate Increase for
11 Water and Sewer Services Provided in Missouri
12 Service Areas. This is File No. WR-2017-0285, et
13 al.

14 My name is Kim Burton, and I am the
15 Regulatory Law Judge assigned to this matter. At
16 this time, the Commission is going to be hearing
17 the oral arguments of those parties that submitted
18 a response or participated in this.

19 The Commission did not direct all parties
20 to be present and participate, so this is just
21 discretionary on the part of the parties. So we'll
22 go ahead and start with entries of appearance.
23 First Missouri American Water Company?

24 MR. COOPER: Thank you, your Honor. Dean
25 Cooper from the Law Firm of Brydon, Swearingen &

1 England, PC, along with Mr. Timothy Luft from
2 Missouri American Water Company, appearing on
3 behalf of Missouri American Water Company.

4 JUDGE BURTON: Thank you. Staff of the
5 Missouri Public Service Commission?

6 MR. WESTEN: Thank you, Judge. My name is
7 Jacob Westen. I am Counsel with the Missouri
8 Public Service Commission Staff.

9 JUDGE BURTON: Okay. Office of the Public
10 Counsel?

11 MR. WILLIAMS: Thank you, Judge. My name
12 is Hampton Williams. I am acting Public Counsel
13 appearing on behalf of Public Counsel.

14 JUDGE BURTON: Midwest Energy Consumers
15 Group?

16 MR. WOODSMALL: Thank you, your Honor.
17 David Woodsmall appearing on behalf of MECG.

18 JUDGE BURTON: Consumers Council of
19 Missouri is a party, and their counsel, John
20 Coffmann, notified the Commission that he was going
21 to be out of town due to a rate hearing in
22 Minnesota this week, so he is going to be excused
23 from today's oral arguments as well as the
24 procedural conference later this week. Next we
25 will hear from the City of St. Joseph, Missouri.

1 MR. STEINMEIER: Thank you, your Honor,
2 Please let the record reflect the appearance of
3 Brian Carter, City Attorney for the City of
4 St. Joseph at City Hall in St. Joseph, as well as
5 William D. Steinmeier of William D. Steinmeier, PC,
6 in Jefferson City, both off on behalf of the City
7 of St. Joseph, Missouri.

8 JUDGE BURTON: Thank you,
9 Mr. Steinmeier. Triumph Foods, LLC? Okay.
10 Seeing no parties. Missouri Industrial Energy
11 Consumers?

12 MR. DOWNEY: Good morning, Judge. Edward
13 Downey on behalf of the MIEC.

14 JUDGE BURTON: Thank you. The Missouri
15 Department of Economic Development, Division of
16 Energy? The Utility Workers Union American Local
17 335? City of Joplin, Missouri?

18 MR. ELLINGER: Marc Ellinger with the law
19 firm of Blitz, Bardgett & Deutsch here in Jefferson
20 City on behalf of the City of Joplin.

21 JUDGE BURTON: Okay. Thank you. Now,
22 there are some applications to intervene that the
23 Commission has yet to rule on. They were timely
24 filed and pursuant to Commission rules. No
25 responses objecting to those applications were

1 filed, and we'll deal with those if those parties
2 are present.

3 Otherwise, we will deal with their entry
4 of appearance at the procedural conference on
5 Thursday.

6 Public Water Supply District No. 1 of
7 Andrew County and Public Water Supply District No.
8 2 of Andrew County, their attorneys, Fischer &
9 Dority notified the Commission that they would not
10 be present today, and they were excused.

11 I will note for the record that they are
12 going to be admitted as a party to this action and
13 a notice will be issued later today to that effect.

14 City of Warrensburg, Missouri? They also
15 applied a timely application to intervene on July
16 21st, and that application will be granted. City
17 of Jefferson City, Missouri?

18 MR. COMLEY: Appearing on behalf of the
19 City of Jefferson, Judge Burton, is Mark W. Comley
20 of Newman, Comley & Ruth. Our business address has
21 been given to the reporter. Thank you.

22 JUDGE BURTON: All right. Thank you.
23 City of Jefferson City, Missouri, is also admitted.
24 City of Riverside, Missouri?

25 MR. WENZEL: Your Honor, Keith Wenzel with

1 the law firm of Spencer Bane on behalf of the City
2 of Riverside.

3 JUDGE BURTON: Thank you, Mr. Wenzel. The
4 City of Riverside, Missouri, is also admitted. We
5 also have the applications to intervene that were
6 timely filed by Kansas City Power & Light Company
7 and KCP&L Greater Missouri Operations Company as
8 well as Union Electric Company doing business as
9 Ameren Missouri.

10 These were separate applications to
11 intervene between Ameren and a joint one from KCP&L
12 and KCP&L GMO.

13 Later on Friday, we did receive a filing
14 that was an objection from the Office of Public
15 Counsel to those applications to intervene.

16 At this time, I don't see that those
17 parties participated in the response -- the joint
18 response to the motion. So the Commission at this
19 time will allow Ameren and KCP&L and KCP&L GMO to
20 either submit oral arguments today or set a
21 deadline for responses to OPC's objection by the
22 end of the day tomorrow on August 8th.

23 And a written order will be directed to
24 that effect. But until a final order from the
25 Commission is issued on those applications to

1 intervene, we will not be having any oral arguments
2 or participation from those parties.

3 MR. LOWERY: And if we were to orally
4 argue -- Jim Lowery, by the way, on behalf of
5 Ameren Missouri. If we were to orally argue it
6 today, you're still not going to rule on the
7 intervention applications today? Is that what the
8 Bench is indicating?

9 JUDGE BURTON: Yes. You can make the
10 arguments today.

11 MR. LOWERY: I -- I mean, I'll file
12 something by tomorrow close of business and let you
13 rule from there.

14 JUDGE BURTON: Thank you, Mr. Lowery.

15 MR. LOWERY: Thank you.

16 JUDGE BURTON: Are there any other
17 applicants that the Commission has not addressed
18 today?

19 All right. Are there any additional
20 preliminary matters that the Commission needs to
21 address today?

22 All right, seeing none, I would ask
23 everyone who is observing or participating today to
24 please make sure and silence your mobile devices.

25 The Commission will begin with

1 presentations and oral arguments with Missouri
2 American Water Company.

3 And unless there are statements from the
4 parties that would suggest a better alternative, my
5 intention was to go through with the responses
6 beginning with Staff and then allow the signatories
7 to the joint response with MECG, MIEC, Office of
8 Public Counsel an opportunity to respond as well.
9 Okay? Seeing none, Mr. Cooper, you have the floor.

10 ORAL ARGUMENT

11 BY MR. COOPER:

12 MR. COOPER: Thank you, your Honor. Good
13 morning.

14 COMMISSIONER STOLL: Good morning.

15 MR. COOPER: I've had a number of issues
16 raised already in the pleadings that are before you
17 in regard to the future test year issue.

18 In my presentation this morning, I'm going
19 to try to hit the high points from Missouri
20 American's perspective. And to the extent I don't
21 hit all of the issues, like I said, I just want to
22 just remind you that we have addressed all the
23 issues in the pleadings.

24 I'll be available for questions to the
25 extent I don't mention something that you want to

1 talk about. Also with me today is Mr. Jim Jenkins
2 who is Vice President of Regulatory Services for
3 Missouri American Water and who has filed testimony
4 in this -- in this case in regard to the policy
5 matters concerning future test year.

6 So as a -- as a logical starting place, I
7 just want to talk about -- about authority. It's
8 been hit on by -- by all the parties that have
9 filed pleadings thus far.

10 But just to emphasize, Courts have stated
11 that as to rate-making, the Commission must make an
12 intelligent forecast with respect to the future
13 period for which it is setting the rate. A
14 rate-making is by necessity a predictive science.

15 I think this means that even in the
16 situation where we're using a historic test year,
17 we're still theoretically trying to reach the
18 appropriate rate for that future time period that
19 the rates will be in effect.

20 Further, as -- as was asserted in the
21 staff pleading, the Courts have indicated that the
22 determination of what test year to use and how to
23 adjusted just it is a fact question within the
24 discretion of the Commission.

25 Thus, the Commission has flexibility based

1 upon the facts before it, and it need not have just
2 one approach that applies in every rate case.
3 Historically, this issue has not been addressed by
4 -- by rule-making. It's been addressed by
5 Commission orders in the rate case.

6 Now, the signatories, among other things,
7 have suggested that the language of Section
8 393.270.4 has some significance to this question.
9 And I think the -- sort of the critical part for
10 those parties is the portion of the section that
11 says that the rates should set with due regard,
12 among other things, to a reasonable average return
13 on capital actually expended.

14 That language certainly does not require
15 that capital be expended five months prior to the
16 date the rates will be effective, which is how our
17 historic test year with a true-up would normally
18 work.

19 Missouri American believes that its
20 proposal is, in fact, consistent with Section
21 393.270.4. Its future test year proposal is
22 designed to base rates on a 13-month average of
23 capital expended through the first year in which
24 new rates set in this case will be in effect.
25 That's not the amount of capital that will be in

1 place at the end of that period. It's an average
2 level of capital for that period.

3 Now, Missouri American recognizes that the
4 adoption of future test year would represent a
5 departure from past practice for the Commission.

6 As explained in -- in the company's motion
7 to establish future test year, it is a departure
8 that's called for by the current circumstances.

9 Missouri American's rate base and expenses
10 are increasing, and revenues are declining as it
11 moves forward in time. Therefore, the relationship
12 between revenues, expenses and rate base that may
13 exist in a historic test year will not be true in
14 the first year rates will be in effect.

15 Among other things, the signatories
16 suggest that an 8.71% return on average equity that
17 they calculate from Missouri American's 2016 annual
18 report should be sufficient for the company.

19 However, I would remind you that even as
20 they have calculated -- calculated that figure,
21 Missouri American would be approximately \$9 million
22 of revenue short of being in the mid to upper end
23 of the ROE range that the company said was
24 reasonable in Missouri American's last rate case.
25 That's 95 to 97.5.

1 The motion to establish this future test
2 year was made at an early stage in the case as the
3 company knew that the Commission commonly sets test
4 years, updates period, true-ups early in the rate
5 case process.

6 Missouri American, of course, indicated in
7 its motion that it thought the use of multiple test
8 years as a result from failure to decide this issue
9 would complicate the hearing of this matter.

10 However, as reflected in the company's
11 reply, Missouri American has been persuaded that
12 the approach proposed by Staff, while somewhat more
13 involved than a traditional rate case is workable
14 in this case.

15 Missouri American is, therefore, in
16 agreement with the Staff's recommendation that the
17 Commission issue its order, one, setting a test
18 year of 12 months ended December 2016 as a starting
19 point for rate change analysis.

20 Two, identify an update period of the six
21 months ended June '17 and a true-up period of the
22 six months ending December 2017 with all parties
23 utilizing actual historic company financial data to
24 present their cases based upon those time frames.

25 And, three, and most important to the

1 company, articulating that by ordering such dates,
2 no party is precluded from presenting further
3 adjustments for Commission consideration based upon
4 projected or forecasted data past December of 2017
5 to determine MAWC's revenue requirement in this
6 proceeding, and, further, that any party -- no
7 party is precluded from opposing such adjustments
8 as well, and, of course, it is Missouri American's
9 burden to provide evidence and to persuade the
10 Commission as to its proposal.

11 If the Commission issues its order
12 consistent with the Staff's recommendation,
13 Missouri American recognizes it will continue to
14 carry the burden of persuasion throughout the
15 course of this case.

16 We think that following the process
17 outlined by the Staff would allow the Commission to
18 have a full record before making a decision and to
19 have sufficient evidence before it to determine a
20 final rate and to support its -- its order no
21 matter what decision is made on this issue.

22 The signature signatories' biggest
23 objection to the Staff proposal is an allegation
24 that the true-up process in this scenario would be
25 unworkable.

1 While there may be some challenges with
2 the Staff process, they should not have anything do
3 with the true-up. The true-up process is for the
4 updating of numbers and not for arguing about
5 rate-making theory.

6 In fact, if the Commission were to adopt
7 the future test year approach proposed by Missouri
8 American, there really would be no reason -- no
9 reason for a true-up because the arguments about
10 revenues, expenses and investment would take place
11 -- would all take place in the primary evidentiary
12 hearing.

13 The target period in that process is, of
14 course, May 31st of 2019, not December 31st of
15 2017.

16 In this case, Missouri American's future
17 test year forecast is a part of its filed case
18 that's before the Commission today.

19 Missouri American's testimony starts from
20 the historic test year identified by Staff. Its
21 assumptions for the forecast are then laid out in
22 that testimony and available today for analysis,
23 assessment, rebuttal testimony ultimately and
24 litigation in the primary evidentiary hearing.

25 This can be found -- well, as to the

1 operating expenses are discussed in company
2 accounting schedule CAS-13 as well as the testimony
3 of Nikole Bowen, John Watkins and Brian LaGrand.
4 Rate base assumptions are detailed in Brian
5 LaGrand's testimony with additional information
6 about projects and the testimony of Mr. Bruce
7 Aiton.

8 Revenue assumptions are detailed in the
9 testimony of Brian LaGrand and Greg Roach. Cost of
10 capital assumptions are detailed in the testimony
11 of Ann Buckley and Scott Rungren. And the tax
12 assumptions are detailed in the testimony of John
13 Wild.

14 Now, while we're on the subject of the
15 company's projections, I would like to make note of
16 additional item that's associated with the process
17 used for these future projections of the company.

18 As I mentioned, the company started with
19 the historic test year referenced by Staff. The 12
20 months ended December 31st, 2016. It then used
21 monthly projections for the approximate 12 months
22 ended May 31st, 2019, which is the future test year
23 using, in this order, one, known changes.

24 So, for example, when you're talking about
25 salary increases that you can see already due to

1 union contracts, that was the basis for the
2 projection.

3 The second factor would be adjustments
4 based upon company experience. So, again, when
5 you're talking about pay increases for non-union
6 employees, the company looked to the history of
7 those over the last several years.

8 The third factor would be the adjustments
9 based upon inflation factor and only as a last
10 resort.

11 Contrary to some of the implications in
12 the pleadings, Missouri American's adjustments
13 based upon this inflation factor represent a very
14 small percentage of the proposed revenue
15 requirement in this case.

16 Now, given that the testimony has been
17 filed by Missouri American, if Staff's approach is
18 followed, I believe the burden of producing
19 evidence has already shifted to those parties that
20 would seek to oppose Missouri American's proposal.

21 And I do say producing evidence as opposed
22 to persuasion, which continues to be on the company
23 throughout the case.

24 But, again, in Staff's proposed process,
25 the true-up would be no more complicated than it

1 would be in any other case because all the
2 evidence, presumably, would have been presented to
3 the Commission -- all the evidence concerning the
4 future test year would have been presented to the
5 Commission prior to the evidentiary hearing, the
6 main evidentiary hearing in this case.

7 Missouri American continues to ask that in
8 setting rates, ultimately, the Commission issue an
9 order adopting a future test year covering the
10 first year that the new rates are expected to be in
11 effect, which is the 12 months ending May 31, 2019.

12 However, recognizing that the application
13 of the future test year is -- is new to the
14 parties, Missouri American believes that the
15 Staff's recommendation is reasonable as reflected
16 in its reply, and Missouri American is supportive
17 of the recommendation, most importantly, though, to
18 include the affirmative statement that no party is
19 precluded from presenting further adjustments for
20 Commission consideration based upon projected or
21 forecasted data past December 2017 to determine the
22 revenue requirement.

23 And as I recognized before, also, that no
24 party is precluded from opposing those -- those
25 adjustments. This process will allow Missouri

1 American to present evidence, the parties to
2 respond and the Commission to consider with the
3 full -- full record the issues associated with both
4 a modified historic test year and a future test
5 year. That's all the comments I have.

6 JUDGE BURTON: Thank you.

7 CHAIRMAN HALL: Good morning.

8 MR. COOPER: Good morning.

9 CHAIRMAN HALL: What types of factual
10 information would be relevant to the Commission's
11 determination of a future test year assuming that
12 the Commission does adopt Staff's approach that has
13 been endorsed by the company as well?

14 MR. COOPER: Well, I think the -- the
15 easiest example is the one that I gave as a part of
16 these -- my comments. So when you're talking about
17 labor costs, you're going to have --

18 CHAIRMAN HALL: Yeah. But you also said
19 that was a small portion of the --

20 MR. COOPER: I -- certainly, what I meant
21 to say was that projections based upon inflation
22 factors are a small percentage of the overall
23 forecast that the company has presented, not just
24 as to labor, but as -- across the board.

25 CHAIRMAN HALL: Okay. I mean, but the --

1 but the main issues here are consumption and
2 capital investment. So in terms of consumption and
3 capital investment, what types of factual
4 information would the company present to persuade
5 us that a future test year is appropriate?

6 MR. COOPER: Yeah. Well, as mentioned,
7 the company has presented testimony from -- from
8 primarily Mr. Roach in terms of the company's
9 experience declining use with -- where it appears
10 that declining use is headed in the future.

11 Its primarily that evidence that the
12 company has to persuade the Commission on that
13 issue. I think, again, to -- we're not abandoning
14 history in the future test year approach.

15 So in terms of investment, I think the
16 company's history of its investment and then as
17 well as its testimony as to needed future
18 investment will be important in those regards.

19 CHAIRMAN HALL: Declining consumption is a
20 -- is a phenomenon in the water industry that the
21 company's been experiencing for a number of years
22 now. What has changed to -- to bring this request
23 to us today?

24 MR. COOPER: Well, the company's
25 experience I mean, one of the things that's been

1 said in the testimony is that over the last ten
2 years, only in one year, and I think that's 2012
3 where there was a historic drought has the company
4 met or exceeded its -- its authorized return.

5 It continues to be working kind of behind
6 the -- kind of behind the ball on -- on that --
7 those efforts to try to meet its -- its authorized
8 return.

9 And I don't know that there's any one
10 significant issue that I could point you to. I
11 think it's the history of those issues and -- and
12 just the fact that -- that the time's been right to
13 bring it forward to the Commission and see what the
14 Commission thinks about this issue.

15 CHAIRMAN HALL: Do you believe that it is
16 possible to keep a historic test year for certain
17 items and employ a future test year for others, for
18 example, consumption?

19 MR. COOPER: I -- excuse me. I do think
20 it's possible. You know, we'd have to talk
21 through, I guess, the various combinations and
22 permutations of that. But, to some extent, the
23 Commission does that today. Right?

24 So even when you -- you have the historic,
25 you have the update. When you go to the true-up

1 period, you're not pulling forward every -- every
2 category of expense and investment and so on. You
3 still have a select number of -- of items that
4 you're pulling forward.

5 So, you know, even today, even under the
6 traditional process, we don't end up with
7 ultimately every category as of the same date.

8 CHAIRMAN HALL: Right. Because from --
9 from my perspective, the aspect of the -- of the
10 company's request that makes the most sense is --
11 is with regards to consumption.

12 And so what I'm wondering is if it would
13 be possible to keep a historic -- a modified
14 historic test year for everything but consumption.

15 Now, the problem, though, with that is
16 that you get into matching principle issues. And
17 so how would -- how -- how could we reconcile that?
18 Or can that be reconciled?

19 MR. COOPER: Well, I think we can.
20 Certainly, there was a part of the company's
21 proposal in the last case that -- that was similar
22 to that, I think.

23 You know, again, going back to the -- to
24 the case law that guides the Commission, you know,
25 the whole purpose of the Commission's efforts is to

1 come up with that appropriate rate for the time
2 period of when the rates are going to be in effect.

3 So if the company is able to persuade you
4 that -- that there is a decline in -- in usage that
5 should be reflected in that, I really think it's
6 incumbent upon the Commission in that scenario to
7 go ahead and separate with those -- those declining
8 revenues in mind.

9 CHAIRMAN HALL: I'd like to return to --
10 to 293.270(4) because I think the -- the consumer
11 groups make a -- make a pretty important argument
12 here about -- about the term actually expended.

13 And I understand your arguments that that
14 doesn't necessarily mean -- or require actually
15 expended in the test year. But it does require
16 actually expended at some point in time.

17 So what would happen if we were to set
18 rates based upon a certain capital expenditure
19 that, for whatever reason, never occurred? Would
20 we not be in violation of the statute?

21 MR. COOPER: Well, I think there's a
22 couple of questions there. The first one is --
23 well, I guess my first answer is that I don't think
24 that this depends upon a specific project.

25 So, for example, if the company forecasts

1 62 million dollars of -- of investment in that
2 period and at the end of the period they're
3 62 million or better, I don't think it matters
4 there at the time of the rate case they thought
5 they were going to put pumps in somewhere and
6 instead they decided to put pumps in somewhere
7 else. So I don't think it has to be sliced quite
8 as --

9 CHAIRMAN HALL: I would agree with that.

10 MR. COOPER: -- quite as fine as that.

11 CHAIRMAN HALL: I would agree with that.

12 MR. COOPER: I think if they don't live up
13 to the investment level that was used for setting
14 the rate, I think the Commission has -- it has
15 complaint processes. It has future rate cases. It
16 certainly would, I would think, take that into
17 account in future rate cases as to whether it
18 really thought that, you know, future test year was
19 something that should be done a second time or not.

20 I think there's a lot of pressure from all
21 those things to -- to -- to insure that the company
22 makes the investments it says it will.

23 But, again, starting with the history of
24 it, I mean, you can look at the history of the
25 company's capital investment, and -- and there's

1 really no reason to believe that that's going to
2 tail off from those loads.

3 CHAIRMAN HALL: Well, but I do think that
4 the consumer groups did a good job of -- of
5 identifying statements made by Missouri American in
6 prior cases where they, in prior rate cases where
7 they identified a certain amount of expected
8 capital investment but made it very clear, but that
9 may not happen, this is just a forecast, this is
10 just a prediction. So --

11 MR. COOPER: It is. You're right,
12 Chairman. I mean, and it always will be because
13 there are -- the company has to be free to -- I
14 mean, in the most extreme example to take capital
15 it might have invested in one area and take it to
16 Joplin when the tornado hit. There are flood --
17 there's flooding from time to time that will hit
18 plants.

19 And so the company will have to be able to
20 -- to flex. And that's really what that language
21 means. Again, I think in the end, the total
22 dollars, it's going to be incumbent upon them to --
23 to invest the total dollars that they -- they
24 suggest that they will.

25 CHAIRMAN HALL: Can you help me understand

1 Ms. Norton's testimony on -- direct testimony on
2 page 4 into 5 where she says that there is
3 A 492.6 million dollar request. Over half,
4 approximately 250 million, would not be part of
5 this rate case under Missouri American's historical
6 test year and true-up period. Could you explain
7 that to me?

8 MR. COOPER: Well, I think the biggest
9 item is partially what we were just talking about.

10 I mean, it -- under a historic approach to
11 this as of December 31st, 2017, that would be the
12 -- the plant numbers that would -- that would be
13 built into the rate.

14 And as you move forward, the company's
15 investment is -- is exceeding its depreciation, its
16 rate base. It's glowing. And a big part of that
17 is going to be just the fact that you're building
18 into the rate that expected capital investment.

19 CHAIRMAN HALL: So there's going to be a
20 massive capital investment increase?

21 MR. COOPER: Well, and -- and let me -- a
22 substantial part of that has to do -- do with the
23 capital.

24 I don't know that it's necessarily even an
25 increase. It's continued. There is some

1 difference that we've talked about in the testimony
2 between the -- sort of the absolutely necessary
3 investment versus the -- the optimal investment at
4 any given point in time.

5 But if you want to go deeper on this,
6 Chairman, I would offer Mr. Jenkins who is with me
7 if you want to go that direction.

8 CHAIRMAN HALL: Well, let me -- I guess
9 what I'm really trying to understand is -- is that
10 additional investment contingent upon the
11 Commission determining that a future test year is
12 appropriate, or will that investment happen
13 regardless?

14 MR. COOPER: Those are always tough
15 questions for the company. But I think Ms. Norton
16 is --

17 CHAIRMAN HALL: Well, what was intended in
18 this testimony?

19 MR. COOPER: Certainly -- certainly, Ms.
20 Norton has touched upon the fact that -- that --
21 and I kind of mentioned it before.

22 I mean, there's an absolute level, and
23 there's sort of an optimal level. And -- and I've
24 heard it at times discussed as, you know, patching
25 the potholes and actually getting the road -- the

1 road fixed is the metaphor that's used from time to
2 time.

3 And so I think the difference between the
4 future test year or not having it can be the
5 difference between that absolutely required level
6 and the optimal level.

7 CHAIRMAN HALL: So some portion of this
8 increase is a function of -- of the Commission
9 determining that a future test year is appropriate?

10 MR. COOPER: I would say yes.

11 CHAIRMAN HALL: Can you explain to me the
12 relationship between the request for a future test
13 year that we're discussing today and the company's
14 request for a rate stabilization mechanism as well?

15 I mean, if you were to -- if the
16 Commission were to determine that a rate
17 stabilization -- stabilization mechanism is
18 appropriate, you don't need a future test year, do
19 you?

20 MR. COOPER: I think -- I think the
21 company would say yes.

22 CHAIRMAN HALL: Say -- I'm sorry. I
23 didn't --

24 MR. COOPER: That they do -- that they do
25 need both.

1 CHAIRMAN HALL: Okay.

2 MR. COOPER: There's two slightly
3 different things. So -- maybe greatly different
4 things.

5 The future test year is -- is what allows
6 us to focus the revenue requirement on the year the
7 rates are going to be in effect. So it -- it
8 fundamentally impacts the -- we believe the revenue
9 requirement upon which the rates would be set.

10 The revenue stabilization mechanism is the
11 mechanism that it ensures -- or we hope it ensures
12 that the company ultimately receives that revenue
13 requirement that's been designated by the
14 Commission.

15 So whether the revenue requirement is set
16 on the historic test year or the revenue
17 requirement is set upon the future test year, the
18 -- the RSM tries to give the company the -- the
19 ability to get to that set revenue requirement,
20 something that -- that's not happening today.

21 CHAIRMAN HALL: Right. So if we were to
22 set a revenue requirement based on a historic test
23 year and revenues came in below that, the rate
24 stabilization mechanism would make adjustments.

25 MR. COOPER: Correct.

1 CHAIRMAN HALL: So -- well, okay. Can you
2 -- can you explain to me again how you think the
3 true-up would function under Staff's proposal that
4 the company has endorsed?

5 MR. COOPER: It's the company's view that
6 the true-up would be really no different than the
7 true-up historically has been; that is, it would be
8 a function of moving numbers forward from the end
9 of the proposed update period, June of 2017 --

10 CHAIRMAN HALL: But wouldn't the
11 difference be that the Commission would have to
12 project those numbers? It would be a -- it --

13 MR. COOPER: Not under Staff's proposal.
14 I think under Staff's proposal, and Mr. Westen,
15 obviously, can refine this, but, historically, the
16 true-up has been for the purpose of just bringing
17 the raw numbers forward.

18 It -- it's -- there's been proposals at
19 times to do more than that in the true-up. But,
20 primarily, it's just for saying, okay, here was the
21 number on June 17th. Here's the number now on
22 December -- at the end of December of 2017. You
23 know, is there any factual dispute about -- about
24 pulling it forward.

25 CHAIRMAN HALL: Okay. Okay. I think I'm

1 getting it. So if the Commission were to adopt
2 Staff's approach, we would hear testimony in the
3 evidentiary hearing about what's going to happen to
4 consumption during -- during the test year, and the
5 Commission would make a decision, Okay, there is
6 going to be a 1.1 percent decline in consumption,
7 we would make that determination as part of the
8 report and order of the case proper.

9 And then there would be nothing -- the
10 true-up would be -- would involve presentation of
11 evidence as to what that 1.1 percent might entail
12 based upon additional information that's happened
13 between the time of the evidentiary hearing and the
14 true-up?

15 MR. COOPER: I -- I don't know -- I agree
16 with the first part of your statement. I mean,
17 during the -- the primary evidentiary hearing, the
18 company would be making its argument that, Here are
19 the revenues in the year rates are going to be in
20 effect.

21 And that would be -- obviously, there
22 would be the opportunity for testimony leading up
23 to that. It might be in opposition. It might be
24 supported, whatever it might be. And I think that
25 would be tried as a part of the evidentiary

1 hearing.

2 The -- the -- as a normal -- always
3 dangerous to say, but as a normal schedule, my
4 experience has been that by the reply briefs for
5 the base evidentiary hearing, you have the results
6 of the true-up hearing.

7 And those get rolled in and are there for
8 the Commission's consideration when it issues its
9 report and order. So I don't really think of it, I
10 guess, as -- as two orders.

11 I think it ultimately ends up being a
12 single order. And the true-up hearing can provide
13 some additional evidence for the Commission's
14 consideration.

15 Now, what I meant, though, in terms of the
16 true-up really not being relevant to the future
17 test year is that -- and I -- and I know this is
18 not the position that -- that the company is
19 supporting right now.

20 But if the Commission were to have said,
21 Yes, we're going to adopt the future test year,
22 parties, utilize that process for purposes of this
23 case, so Missouri American would -- would have
24 thought in setting the procedural schedule there
25 would be no need for the -- the true-up hearing,

1 that, in that scenario, the focus is on May of
2 2019. It's not December of 2017. And -- and the
3 true-up kind of becomes irrelevant in that
4 scenario.

5 Now, as I understand Staff's proposal,
6 we're kind of going down both -- both processes.
7 And so, yes, the true-up still has a -- has a place
8 as -- as Staff has proposed it.

9 But, again, I think its place continues to
10 be in regard to the historic test year process and
11 not in regard to the future test year.

12 CHAIRMAN HALL: Okay. I have no further
13 questions. Thank you.

14 COMMISSIONER STOLL: No questions.

15 COMMISSIONER RUPP: I have one. Good
16 morning.

17 MR. COOPER: Good morning.

18 COMMISSIONER RUPP: You touched on this.
19 I just wanted to see if you'd expand on it. What
20 specifically should be done if -- and what steps
21 should the Commission take if -- to adjust your
22 rates in the future if your actual investment that
23 you forecasted is not made?

24 You had kind of said, Well, a future test
25 case, that could be a couple years down the road.

1 When should we take action in your -- in your
2 opinion from the company's standpoint?

3 MR. COOPER: Well, certainly, the
4 Commission has the ability to -- to see those
5 numbers. So it's not a problem for -- for those
6 numbers to be monitored in that -- in that first
7 year.

8 I think it -- it, obviously, and always
9 has -- well, parties obviously and always have the
10 ability to file complaints if they want to do so.

11 And, again, I think in the future rate
12 case, they have even more options, both -- both in
13 terms of trying to address that issue in terms of
14 the new rates and in terms of what they think of
15 the company's future test year proposal.

16 I mean, I -- if -- if the Commission were
17 willing to set rates based upon a future test year
18 and a -- and a level of investment, first off,
19 history would tell you the company will hit that.

20 But even if they -- you know, they would
21 have -- even if that weren't the case, they'd have
22 a huge incentive to hit it.

23 COMMISSIONER RUPP: And how long -- from
24 the company's standpoint, how long would you like
25 to have to hit those targets before someone

1 questioned your ability to hit your forecasts?

2 MR. COOPER: Well, 12 months. I mean, the
3 -- it's going to be an issue in 12 months, so --

4 CHAIRMAN HALL: The -- the concept of --
5 of known and measurable adjustments to -- to
6 historic test year numbers is a -- is a concept
7 that -- that everyone in this room knows -- knows
8 well.

9 But where does -- that known and
10 measurable modification to historic test year, is
11 that found in statute, or is that by case law and
12 practice?

13 MR. COOPER: I'm sorry, Chairman. Would
14 you say that again?

15 CHAIRMAN HALL: The concept of known and
16 measurable adjustments to -- to historic test year
17 numbers, does that -- does that come from -- is
18 there -- is there a statutory reference, or is that
19 practicing case law?

20 MR. COOPER: Yeah. If there's a statutory
21 reference, I don't remember it offhand. I have
22 seen it pop up in -- in the case law along the way.

23 Known and measurable, of course, is --
24 it's one of those things we say and we think we
25 know what it means. But as we start to apply it --

1 it can have some -- some variability in it.

2 I mean, it -- when you're annualizing,
3 when you're normalizing, I mean, you're -- you're
4 taking past information and you're projecting a --
5 an expense level for that.

6 So, certainly, we think that in the
7 concept of a future test year, you -- you end --
8 end up more with a standard of reasonably
9 predictable.

10 But I don't know that it's -- it's too far
11 off what -- what we're already doing in the
12 historic test year process, at least in terms of
13 some things.

14 I would like to mention, though, going
15 back just for a second, we were talking about
16 investment in -- in plant over that 12-month
17 period. And I -- I mentioned it in my original
18 comments, but -- but it may bear kind of
19 reinforcing here.

20 In the future test year proposal that the
21 company has made, the investment that's built into
22 that rate is not the investment that's in place as
23 of May of 2019. It's a level of investment that
24 would be the predicted average, 13 month-average,
25 over that period.

1 So there's -- there's a little -- back to
2 Commissioner Rupp's question, there's -- I --
3 there's some space in there, I guess, is what I
4 would tell you that -- that it really, as you start
5 to look at the numbers over -- that are built in,
6 again, it's an average amount. It's not an ending
7 amount.

8 COMMISSIONER RUPP: In follow up on what
9 the Chairman was just asking, Staff and signatories
10 said that, you know, there's not an explicit path
11 or word for future test year in statute.

12 Are you aware of any other State
13 Commissions that have ordered future test years
14 without, like, specific statutory language?

15 MR. COOPER: Well, we've -- we'll have to
16 go back and look at some of that. We've provided
17 some of that with our -- with our reply.

18 I know it's a little hard to read in the
19 format that it comes out of EFIS. But we've hit on
20 each of the states that Missouri American operates
21 in and how those -- how those have come about.

22 So I can't stand here and tell you the
23 answer to your question, but it is available and I
24 think largely in one of attachments to our reply.

25 COMMISSIONER RUPP: I was hoping you

1 could, like, narrow it down to like a quick little,
2 Here it is, here it is, here it is.

3 MR. COOPER: Yeah. Well, if you want us
4 to do that, we certainly can do that. And like I
5 say, I hesitate to refer you to that appendix
6 because of how they come out of EFIS on the screen
7 print, and it takes me a magnifying glass to read
8 that language, so --

9 COMMISSIONER RUPP: Right. Right. If
10 anyone knows off the top of their head in the next
11 couple days, that -- that would save me from
12 getting out the magnifying glasses.

13 MR. COOPER: Very good. We'll do it.

14 JUDGE BURTON: I have a few questions for
15 you as well. From a procedural perspective, can
16 you walk me through what time frame Missouri
17 American reasonably expects to conduct an
18 evidentiary hearing?

19 MR. COOPER: It's hard to say at this
20 point in time, I think, Judge. I mean, I don't
21 know how the -- the evidence is going to -- to sort
22 out.

23 I would envision it taking place in a
24 similar time period as we've -- we've had them
25 before. I think that in a lot of the big company

1 rate cases, we've initially set two weeks or three
2 weeks and then pared it back from there.

3 I guess, personally, I wouldn't see any
4 reason to provide any more time than at least we've
5 initially provided in the past, and then we'll just
6 have to see where the -- where it goes.

7 JUDGE BURTON: Okay. I'm sure you've
8 reviewed the responses from the other parties and
9 that they've expressed concerns about having access
10 to information.

11 You've indicated that Missouri American
12 would consider Staff's recommendation of options
13 considering the three tiers, the historic test year
14 through December 2016 as well as the updated
15 information for 2017.

16 Staff gave an example of -- of submitting
17 information from the company that replaces
18 projections for 2017 with actual numbers for review
19 by other parties. As of today, what actual numbers
20 for 2017 can the company provide to the other
21 parties?

22 MR. COOPER: Give me just one moment.

23 JUDGE BURTON: Uh-huh.

24 MR. COOPER: Judge, I just wanted to
25 confirm that. But -- but today, data through June,

1 which is the identified update period in the
2 Staff's recommendation would be available.

3 JUDGE BURTON: Okay. And what about the
4 remainder of the year? And I'm looking at this
5 from the perspective of walking back from
6 potentially the operational ball date when the
7 Commission's order on the tariff submitted by the
8 company would need to go in effect in May of 2018.

9 MR. COOPER: Uh-huh.

10 JUDGE BURTON: Looking back from that time
11 frame -- and, obviously, I'm sure the parties would
12 like an opportunity for ample briefing and for a
13 hearing and for the Commission to make a decision,
14 if we were looking at February 2018 for a hearing,
15 when would the parties be able to submit that
16 information in testimony form to the Commission?

17 MR. COOPER: Uh-huh.

18 JUDGE BURTON: Because you're stating that
19 this would not need to be as part of a true-up. It
20 would just be part of the case in chief, correct?

21 MR. COOPER: Right. So, again, the
22 company's proposal is a future test year. So, you
23 know, we think, you know, the evidence that's
24 available today, of course, from our perspective,
25 and it's our burden to persuade the Commission of

1 this ultimately, but we think that the information
2 available today is sufficient to make our argument.

3 Now, we understand now there's one -- for
4 touch points along the way. And those touch points
5 that have been identified by Staff really, I mean,
6 they really hit on what I guess I would have
7 anticipated to see without the future rate case --
8 or future test year proposal.

9 So, you know, much like any other case, I
10 would think that, you know, much of your testimony
11 at the evidentiary hearing would be based upon the
12 update period numbers.

13 And eventually you would pull forward
14 through the end of December in a bit of true-up
15 testimony, which could happen -- again, you know,
16 past experience would tell me probably somewhere in
17 -- in late March you'd have true-up testimony and a
18 true-up hearing. And briefing would be completed
19 sometime after that sufficiently ahead of the end
20 of May.

21 JUDGE BURTON: Well, let's go into that
22 for a second because I'm looking at this from the
23 procedural position.

24 If the Commission was to have this true-up
25 in -- in March when the parties would have an

1 opportunity to -- to present this evidence to the
2 Commission, that would leave the Commission little
3 time to actually review briefs and to actually
4 address all of the issues and issue a report and
5 order, correct?

6 MR. COOPER: Well, they would have the
7 same time they have in every other rate case.

8 JUDGE BURTON: But we're also addressing
9 additional issues that are more complex than we
10 normally do in a typical rate case.

11 MR. COOPER: But, again, from our
12 perspective, we don't think that true-up
13 information is -- is critical to the additional
14 issue that -- that we're proposing, you know, the
15 future test year.

16 If you start to think about -- and I know
17 this is hard. I -- it's hard for me. I've
18 practiced here for many years. But the focus
19 becomes that future time period.

20 And if your focus is that future time
21 period, what a number is on December 31st, 2017,
22 while something you probably shouldn't ignore is
23 much less important because the issue is what do
24 you think the -- the revenue requirement is during
25 the period of time the rates are going to be in

1 effect?

2 So that's why I say I think that the
3 information to try that issue, for the Commission
4 to consider that issue should be before it in the
5 -- in the primary evidentiary hearing.

6 And the true-up ultimately is similar to
7 what it has been in the past. It's an opportunity
8 to -- to pull numbers forward for those that
9 continue to propose a historic test year.

10 JUDGE BURTON: Okay. Thank you. Is there
11 any risk -- from your position, can you see it as a
12 practical that the Commission might have to deal
13 with cherry picked issues, that the party might --
14 that the company might submit as far as, This is
15 what we want to project for the future forecast.
16 These are the issues that we think might be
17 impacted by -- by inflation? That wouldn't be a
18 balance of all of the cost and expenses and
19 advantages for the company. We're looking through
20 the future test year.

21 MR. COOPER: Certainly, that's not the
22 company's proposal. And the company's projections,
23 as I said, they're in the testimony today as to --
24 as to all the categories.

25 So those are available today for people to

1 take a look at and say either they -- they agree,
2 they don't agree, what have you.

3 But -- but the company's projections are
4 -- are available now. And they're not based upon
5 picking and -- picking and choosing unless there is
6 evidence that -- that supports results.

7 JUDGE BURTON: Okay. Now, the -- the
8 estimated 250 million, that would not be included
9 in the historic test year, and that's obviously
10 just an estimate -- a rounding of the number, that
11 is just referenced as -- as plant, correct? So it
12 wouldn't be including anything that might be
13 eligible for an infrastructure system replacement
14 surcharge?

15 MR. COOPER: Actually, that's a part of
16 the testimony as well. It does include it. And
17 the company's stated in the evidence that if its
18 proposal were adopted based on the plant numbers,
19 there would not be an ISRS proposal until sometime
20 after May of 2019 because those -- those
21 investments would be assumed to be within the --
22 the revenue requirement that was set by the
23 Commission.

24 JUDGE BURTON: Okay. Thank you. Next,
25 the Commission will hear from Staff.

1 ORAL ARGUMENT

2 BY MR. WESTEN:

3 MR. WESTEN: May it please the Commission.
4 My name is Jacob Westen, and I am Counsel
5 representing Staff for the Public Service
6 Commission.

7 I had this planned to give you guys a big
8 talk about what Staff's motion is, and I think I'm
9 going do that, but I'm going make it brief.

10 But I really want to address the questions
11 that you posed to Mr. Cooper. So what I'm going to
12 do is quickly kind of touch on outline of our
13 argument or our position and then try to address
14 some of those questions. I'm happy to take any
15 question you have.

16 On talking, I'm also happy to offer Mr.
17 Oligschlaeger or Mr. Busch from Staff if you have
18 more technical or fact based on questions that I'm
19 not able to answer.

20 So, obviously, the question before us
21 today is whether or not you can adopt a future test
22 year. And there are two questions that you have to
23 ask when examining that issue.

24 The first is, Is it lawful? Is it
25 authorized by statute? The second being, Is there

1 a sufficient factual and policy basis that's
2 substantial and complete and on the record as a
3 whole to make that determination.

4 Staff believes the answer to the first
5 question, is it lawful, is yes. We think that --
6 in looking at the -- in totality of the statutes
7 that the Commission is authorized to do a future
8 test year.

9 But looking at that second piece of it,
10 whether or not there's enough facts and policy
11 support at this point in time to depart from the
12 longstanding held -- up by the Courts position of
13 the historic test year is, no, not at this point in
14 time.

15 And Staff hasn't completed its audit. And
16 that's the position that we have proposed to adopt
17 the 2017 update period through June and then
18 through the end of December for true-up.

19 The basis -- let me address both of those
20 questions real quick, and then I'll get into some
21 of the questions you had for Mr. Cooper.

22 Is it lawful? As to so there's no
23 explicit prohibition in our statutes saying, You
24 cannot use a future test year for water companies.

25 There is an explicit prohibition in our

1 statutes that says you cannot use a future test
2 year for electric companies, and it's 393.135 RSMo.
3 So it's an initiative proposition that was passed
4 in 1976 and explicitly prohibits using plant that
5 has not actually become used and useful in
6 determination of rates.

7 And that really is kind of the key issue
8 from Missouri American. As you've all touched on,
9 there's 250 million dollars proposed in the future
10 that would not yet be completed at the time that we
11 set rates. And that is the reason why Staff wants
12 to more thoroughly investigate this rather than
13 just adopt it at the outset.

14 So the second question, then, is, Is there
15 fact in policy? The company has presented its
16 testimony -- or at least they have filed their
17 testimony. We've not yet had an evidentiary
18 hearing on it.

19 And Staff is still in the process of
20 conducting -- Staff isn't trying to say that we
21 completely disagree with the company's numbers or
22 that we don't trust them. We need to complete our
23 audit first to make sure that we can verify that
24 the information that has been presented and filed
25 in EFIS holds up under scrutiny, which is the job

1 of Staff.

2 CHAIRMAN HALL: So if that audit did
3 verify that factual information, then Staff would
4 be supportive of a future test year?

5 MR. WESTEN: Of those facts. Now, there's
6 a big policy question. And that is I do think our
7 statutes have not been used for historic test year.
8 And our regulations are not set up for a historic
9 test year.

10 JUDGE BURTON: You mean future test year?

11 MR. WESTEN: I'm sorry. Yes. Future
12 year. I'm sorry. Our regulatory schemes, our
13 regulatory schematic has not been applied to a
14 future test year.

15 So I think Staff is -- Staff is hesitant
16 to go full hog into a future test year with some of
17 the drawbacks that our regulations and our statutes
18 may have.

19 They don't provide some more explicit ways
20 to address some of these questions like used and
21 useful, like what to do with that 250 million
22 proposed plant investment.

23 CHAIRMAN HALL: So what could happen
24 between now and the evidentiary hearing that would
25 lead the Staff to a position of being supportive

1 for future test year?

2 MR. WESTEN: I think -- I think that --
3 well, I don't want to speak too much for our
4 auditors and our economists and our engineers and
5 our financial analysts.

6 But I do think that verification of it, at
7 the very least, the facts that the company has
8 proposed, I think making sure that we believe the
9 underlying trends that they have proposed are
10 accurate, and I that I making sure that a both the
11 company, the Staff and all the parties involved
12 have a sufficient wrangling of what kind of policy
13 implications this has and how to treat these going
14 forwards is going to be the main drivers for us.

15 For example, what to do if the company
16 does not completely invest in the capital
17 expenditures that they have proposed. We don't
18 really have a good mechanism to treat that.

19 Now, Mr. Cooper has proposed a complaint
20 for the next rate case. Staff is -- and this is
21 just a proposal. Staff has discussed a post
22 true-up process to make sure that that is being
23 done. We don't have the regulatory mechanisms to
24 deal with that in the same way.

25 CHAIRMAN HALL: Could the -- could the --

1 could the Commission put a tracker on capital
2 investment?

3 MR. WESTEN: That -- that could be one
4 mechanism. There are other mechanisms. And it's
5 -- those kinds of questions that we have to
6 address.

7 The -- if I might just go ahead and kind
8 of try to respond to some of those questions that
9 you had, Mr. Cooper is correct that the nature of
10 what we do is -- as cited in our Supreme Court case
11 and State, ex. rel. Missouri Public Service
12 Commission Company versus Frass is -- it is
13 necessarily a predictive science, right?

14 The whole point is to create what we
15 believe is the most accurate representation of what
16 revenues and expenses will be so that the company
17 can have an accurate and constitutionally approved
18 through due process income and make sure that they
19 can provide safe and adequate service and just and
20 reasonable rates.

21 The issue with the future test year then
22 is how accurate is that prediction? It's not as
23 accurate as the real numbers that we know we have
24 that are updated, adjusted through known and
25 measurable changes that are normalized and

1 annualized. And, thus, we think best represent
2 what the -- the actual expenditures and revenues
3 need to be for the company to provide safe and
4 adequate service.

5 So the question -- the question here,
6 then, is what -- what policy and what regulatory --
7 and maybe agreements with the parties, what -- what
8 processes can be in place to make sure that the
9 projected numbers the proposed numbers are going to
10 be sufficiently accurate? And you're right.

11 Trackers, other mechanisms may be one route to use.

12 Let me -- I'll just point out a couple
13 things. Staff's hesitation and the reason why we
14 have proposed the update through June 30th, 2017,
15 and then trued up through December 31st, 2017, is
16 because we do believe that that factual information
17 is more accurate as a part starting point for a
18 projection rather than to do what the company has
19 currently proposed -- or I guess has previously
20 proposed, which is to take that 2016 historical
21 information, make a projection and then make a
22 second projection for the future from that.

23 So we appreciate the company's willingness
24 to agree to use actual numbers rather than two sets
25 of projections. We think that, at the very least,

1 is going to be more accurate in setting just and
2 reasonable rates.

3 Now, Chairman, you asked the question of
4 can consumption -- what you thought was factually
5 one of the most convincing issues that the company
6 is having to address, the fact that we have
7 declining consumption that can be reconciled with
8 the matching principle.

9 And it's -- that's an interesting
10 question. And it's a challenging one because the
11 matching principle simply measures information over
12 a consistent period of time.

13 The matching principle isn't supposed to
14 be that revenues and costs increase simultaneously
15 or decrease simultaneously. Right? So it's simply
16 a scoreboard. It's simply --- it's just a graph,
17 right? And we make adjustments in measurable,
18 annualized, normalized to try to make that
19 information more accurate.

20 So I don't know that declining consumption
21 on its own taken from a projection separate from
22 all of the other information, I don't know that
23 that would necessarily meet the matching principles
24 because you're looking at two separate sets of
25 information.

1 But there's nothing that -- the matching
2 principle is an accounting principle. And it's --
3 it's used by NARUC. It has been adopted and used
4 by the Commission's practice all over the country.
5 And the Courts have upheld it as an appropriate
6 mechanism, one of the many allowable mechanisms for
7 determining rates.

8 So it may not meet the matching principle,
9 but that's part of the issue of trying to figure
10 out how accurate the information is. So the
11 matching principle could work for future test year
12 if it's all accurately projected and you're
13 measuring that information at the same point in
14 time, right? Because that's the whole point.

15 I feel like I'm creating kind of an
16 over-long technical explanation. But I just wanted
17 to touch on that. If you're comfortable, I'd like
18 to just kind of keep going through some of the
19 questions you've had because I think they're
20 important ones, and I would like to address them.

21 Chairman, you asked if the company does
22 not actually expend the funds after it has been
23 projected, would that be a violation of the
24 statute.

25 I think that's a fantastic question. I

1 think -- without having consulted with Staff, I
2 think there's a good chance that it could be,
3 especially if we are supposed to be relying on the
4 used and useful.

5 Other jurisdictions, Mr. -- Commissioner
6 Rupp, you had that question. Of the ten that
7 Missouri American proposed -- or that -- I'm sorry.

8 Of the ten jurisdictions that American
9 Water has future test years in, seven have
10 statutory and regulatory decisions that authorized
11 the future test year. Three of them do not.

12 They are based on case law. They're based
13 on Commission kind of determinations. Those are
14 New York, Tennessee and West Virginia has done it
15 with their ISRS statutes.

16 So this issue of not actually expended,
17 the Courts have said you have to use the statutes
18 that exist in your state. And the fact that we
19 have this not -- not actually expended language is
20 something that the Commission would have to address
21 and consider in how it treats this information, how
22 we want to treat proposed future test years and the
23 information that's put forward in that.

24 CHAIRMAN HALL: So let me follow up on
25 that.

1 MR. WESTEN: Sure.

2 CHAIRMAN HALL: So do you believe that
3 that statute, the 393.270(4), the provision that
4 you were just discussing that requires --

5 MR. WESTEN: Yes.

6 CHAIRMAN HALL: -- that -- that the --
7 that the revenue requirement be set upon capital
8 actually expended, does that limit our ability to
9 apply a future test year with regard to capital
10 expenditures?

11 MR. WESTEN: I do not think -- if the --
12 if it's -- does it prohibit a future test year? I
13 don't think -- I think the answer is no, it does
14 not. I do think it constrains what can happen in a
15 future test year.

16 CHAIRMAN HALL: I don't understand that
17 answer.

18 MR. WESTEN: So if I -- if I can try to
19 explain. I -- that statute, I think, would
20 necessarily have to apply to how a future test year
21 is applied because it necessarily has to apply to
22 everything that we do.

23 Because we're proposing a future test year
24 for the first time here -- or its being proposed
25 here, those statutes would still have to apply.

1 The question then is whether or not the
2 capital expenditures the company has proposed,
3 their projected three-year, five-year investment
4 would actually go into effect.

5 I think that, at least according to this
6 statute, there would be some constraints on that.
7 The big projects that are proposed would actually
8 have to be installed and go into effect.

9 I don't think that the rates that are
10 being proposed are being set on nothing. For
11 example, in other jurisdictions that use a future
12 test year, one of the things that can be restricted
13 is swapping out of projects that are proposed.

14 If a project is of a certain percentage or
15 size or amount, the company is not allowed to say
16 at the last minute, We made a change. We're not
17 going to install that plant. We're going to
18 install that other plant instead.

19 It has prudence implications. It has
20 service implications. And so other jurisdictions
21 have made changes to try to address those concerns
22 and keep that from happening.

23 I think necessarily we'd have to because
24 we don't have that kind of regulatory guidance
25 going forward with the future test year to make

1 those kind of considerations. Other questions I
2 can --

3 CHAIRMAN HALL: You can continue.

4 MR. WESTEN: One of the big issues that I
5 want to address is the true-up. And I think -- I
6 think Mr. Cooper did a very good job trying to
7 discuss it and discussing it.

8 The true-up hearing and the true-up period
9 that Staff has proposed from June 30th to December
10 31st, 2017, isn't to re-litigate maker issues.
11 It is simply an updating of the numbers from that
12 time period.

13 Staff's currently conducting its audit.
14 We're already getting information and seeking
15 information through the end of June 30th. So
16 Staff's direct case will include information from
17 June 30th -- up to June 30th.

18 The true-up would just update those
19 numbers. In previous rate cases, it's just been to
20 provide an update to the -- the numbers in the main
21 case and to the extent that there are major
22 regulatory policy topics like the use of a future
23 test year, methodology questions like, Is the
24 inflation factor appropriate, questions like, Is
25 the projection for the increase in company's

1 employees appropriate, capital expenditures.

2 All those can be addressed in the main
3 hearing. And then those numbers -- those numbers,
4 once adopted by the Commission, would just be
5 adjusted by whatever those true-up numbers are.

6 CHAIRMAN HALL: So wouldn't we have to
7 re-examine all those projections in the true-up?

8 MR. WESTEN: The idea would not be to
9 re-examine them, not to determine whether or not
10 they are accurate or not, but, essentially, do the
11 multiplication factors from the trued up numbers to
12 -- with the inflation factors or with the
13 projections.

14 The methodology for how to reach the
15 future test year projection shouldn't change. The
16 actual numbers that may underlie it -- and is
17 that --

18 MR. OLIGSCHLAEGER: I'd -- I'd probably
19 expand on that a little better.

20 MR. WESTEN: Okay. Well --

21 CHAIRMAN HALL: Well, I'd like to hear
22 that, Judge, if that's okay.

23 MR. WESTEN: Put you on the spot.

24 JUDGE BURTON: That's fine. I'll just go
25 ahead and swear you in, if you'll just come up to

1 the witness stand.

2 MR. WOODSMALL: Your Honor, I guess I
3 would just object because we didn't know this was
4 going to start taking evidence.

5 We didn't bring witnesses. We didn't know
6 this inquiry. We didn't have an opportunity to do
7 discovery of him to depose him. So the fact that
8 this now seems to be turning into an evidentiary
9 hearing concerns me a little bit. Just note my
10 objection.

11 JUDGE BURTON: Okay. It is noted for the
12 record. And, also, the notice for the hearing
13 indicated that the parties may present witnesses to
14 answer any questions from the Commission.

15 MR. WOODSMALL: But it was noticed as an
16 oral argument, so --

17 JUDGE BURTON: Please raise your right
18 hand.

19 MARK OLIGSCHLAEGER,
20 being first duly sworn to testify the truth, the whole
21 truth, and nothing but the truth, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WESTEN:

24 JUDGE BURTON: Okay. Would you please
25 state and spell your name for the record?

1 A My name is Mark L. Oligschlaeger. My last
2 name is spelled O-l-i-g-s-c-h-l-a-e-g-e-r, and I am
3 the Manager of the Auditing Department for the
4 Missouri Public Service Commission.

5 JUDGE BURTON: Okay.

6 **Q (By Mr. Westen) Mr. Oligschlaeger, would**
7 **you mind discussing how you anticipate the true-up**
8 **period would work in the future test year?**

9 A Sure. In theory, how it should work is
10 the company or the party that desires use of a
11 future year would propose as its direct case the
12 basic procedures it would use to updates its rate
13 base revenues and expense numbers beyond the end of
14 the test year or, in this case, the end of the
15 true-up period and whether -- and the benefits or
16 detriments of that position could be thoroughly
17 debated by the parties in the initial evidentiary
18 hearings.

19 Now, I think the real question comes to
20 what extent would those numbers or those processes
21 be subject to change in the true-up?

22 **Q Right.**

23 A The processes, I think, again, in theory
24 should not be subject to change. A party should
25 not come up with a whole new list of rate base

1 additions it once included, should not come up with
2 a wholly different way of escalating expense
3 numbers or -- or forecasting declines in revenues
4 as part of the true-up process.

5 I -- I don't think that can be
6 accommodated procedurally very well. Now, can --
7 can numbers themselves change? Perhaps.

8 Obviously, we would apply escalation
9 factors that should be applied to the numbers at
10 the end of the test, at the true-up period that
11 that's understood.

12 Can the company or a party come up with a
13 different -- we don't want do this plant project
14 anymore, we want to do this one instead, could that
15 be handled in the true-up process? I think the
16 answer -- my best answer is I don't know.

17 And that's probably something that might
18 bear further discussion between the parties in this
19 case in terms of how we discuss a possible
20 procedural schedule.

21 **Q That was actually my next question. Do**
22 **you think those are the types of topics that could**
23 **be addressed in a procedural schedule or in a**
24 **discussion of how a true-up hearing would operate?**

25 A I think it would be very helpful to have a

1 general discussion of the parameters of what kind
2 of new evidence might be properly considered as
3 part of the true-up process in this case.

4 MR. WESTEN: I don't have further
5 questions.

6 CHAIRMAN HALL: No questions. Thank you.

7 JUDGE BURTON: Any questions from the
8 parties?

9 MR. WOODSMALL: Not on this specific
10 issue, but I have a whole bunch of questions now
11 for Mr. Oligschlaeger.

12 JUDGE BURTON: Why don't we go ahead and
13 begin.

14 CROSS-EXAMINATION

15 BY MR. WOODSMALL:

16 **Q Okay. First off, do you recall a County**
17 **Water case in the '90s in which County Water sought**
18 **to use a future test year or some other mechanism**
19 **to address escalating capital addictions? A '95**
20 **case?**

21 A I actually was part of that case. I would
22 not call that a future test year proposal. I think
23 it was more limited to what was called future plant
24 and service.

25 **Q And Staff opposed that; is that correct?**

1 A That is correct.

2 **Q Okay. And you were the Staff witness that**
3 **wrote a memorandum opposing that; is that correct?**

4 A Well, I -- I sponsored testimony opposing
5 it, yes.

6 **Q Okay. Do you recall at the time that AT&T**
7 **was divested that Staff had to set rates for**
8 **Southwestern Bell?**

9 A Yes, I do.

10 **Q And do you know whether a future test year**
11 **was used to set rates for Southwestern Bell at that**
12 **time?**

13 A I believe projections were used to a much
14 greater degree than we would have under more normal
15 rate-making circumstances. So I think it's fair to
16 say that something close to a future test year was
17 used in that particular instance.

18 **Q And do you recall that, at that point in**
19 **time, the Commission had to suspend or extend the**
20 **11-month time frame for that rate case?**

21 A I vaguely recall that. Yes.

22 **Q Okay. So that case, because it involved**
23 **future test year, took more than 11 months; is that**
24 **correct?**

25 A I don't remember the specific fact -- or

1 factors that led the Commission to suspend it
2 beyond 11 months.

3 **Q Okay. But it was more than 11 months?**

4 A That's my recollection. Yes.

5 **Q Okay. And do you recall that the outcome**
6 **of that case, that Southwestern Bell never itself**
7 **filed a subsequent rate increase? Is that -- is**
8 **that true?**

9 A I don't recall that they did.

10 **Q Okay. Do you recall that there were two**
11 **subsequent complaint cases against Southwestern**
12 **Bell?**

13 A Let -- let me amend my previous answer. I
14 vaguely, again, recall that perhaps Southwestern
15 Bell filed a rate increase case sometime around
16 1985, 1986, which was subsequently settled or
17 perhaps withdrawn by the company.

18 And, again, my memory is very hazy of
19 that. No rate change resulted if that happened.
20 Subsequent to that, yes, there were two separate
21 earnings complaint cases that were filed by Staff,
22 and perhaps other parties joined in on that.

23 **Q So just so wrap that up, a future test**
24 **year was used. Rates were set. And the only**
25 **direction that rates went after that were two rate**

1 **reductions; is that correct?**

2 A According to my memory, yes.

3 **Q Okay. And is it your understanding that**
4 **complaint cases are time consuming and arduous?**

5 A Those were. And in general, I would agree
6 with that.

7 **Q Okay. The issue of using future plant as**
8 **one aspect of the future test year, would you agree**
9 **that there are potential internal revenue service**
10 **normalization issues with projected deferred taxes?**

11 A There could be. That is not something I
12 particularly have dealt with in recent years.

13 MR. WOODSMALL: Okay. I have nothing
14 further. Thank you.

15 JUDGE BURTON: Okay. Any other further
16 questions from the parties?

17 MR. COOPER: Yes, briefly.

18 CROSS-EXAMINATION

19 BY MR. COOPER:

20 **Q Mr. Oligschlaeger, you were asked**
21 **questions about the Southwestern Bell case. Would**
22 **you agree with me that, at that point in time,**
23 **there were huge changes going on in the**
24 **telecommunications industry?**

25 A Yes. And, in fact, that -- that is the

1 exact reason why we thought use of some projections
2 in the 1983 rate case were appropriate.

3 **Q So include splitting of assets amongst**
4 **companies as a result of that case?**

5 A Well, that was one aspect. Obviously,
6 Southwestern Bell a stand-alone entity had no prior
7 history prior to January 1, 1984.

8 **Q And so inter-carrier compensation issues,**
9 **a variety of issues other than merely projection of**
10 **-- of a revenue requirement. Would you agree with**
11 **that?**

12 A There were a lot of unique issues at that
13 time.

14 MR. COOPER: Thank you.

15 JUDGE BURTON: Any other parties? Staff,
16 any redirect?

17 MR. WESTEN: No questions.

18 JUDGE BURTON: Thank you, Mr.
19 Oligschlaeger. You're excused.

20 MR. WESTEN: If I might -

21 JUDGE BURTON: Mr. Westen, you'd may
22 resume if you'd like to return to the podium.

23 MR. WESTEN: Just one kind of quick
24 summary point, and then I'll be happy to take any
25 more questions. I just want to clarify our

1 position, staff's position.

2 One, we believe the Commission has the
3 authority to use a future test year. We think the
4 statutes allow it.

5 And, two, at this time, if you were to
6 make a ruling today, our answer would be no. But
7 if you decide you want to move forward with
8 consideration of the future test year, at this
9 time, there's no evidence that Staff is relying
10 upon.

11 We'd like to complete our audit and
12 evaluate the facts that the company has proposed.
13 If a decision is deferred, Staff would work on
14 developing a recommendation as to how to do the
15 true-up mechanism or tracking mechanism should a
16 future test year go forward.

17 And then Staff will likely recommend how
18 we want to address that definition of actually
19 expended in that process. That's -- that's what we
20 think is important to note. I'm happy to take any
21 other questions you have.

22 CHAIRMAN HALL: No further questions.

23 Thank you.

24 COMMISSIONER RUPP: I have some.

25 JUDGE BURTON: Okay.

1 COMMISSIONER STOLL: No questions.

2 COMMISSIONER RUPP: So I'm just going to
3 clarify a couple things you said in the very
4 beginning before your -- you were answering
5 questions, and I think you might have tried to sum
6 up some of them.

7 MR. WESTEN: Sure.

8 COMMISSIONER RUPP: But -- so you just
9 stated that if -- let me just make certain. If we
10 decided to do a future test year and just not your
11 hybrid quasi test year, whatever that you guys are
12 -- we just do a full-blown future test year, let's
13 do it, you believe that that is legal?

14 MR. WESTEN: Yes.

15 COMMISSIONER RUPP: You believe that this
16 Commission has the authority to -- to do that?

17 MR. WESTEN: Yes. I believe the statutes
18 do not prohibit it.

19 COMMISSIONER RUPP: And you believe it is
20 the wrong public policy.

21 MR. WESTEN: I agree. If you were to
22 decide today, I think that is the wrong public
23 policy. We don't believe that there is sufficient
24 facts or policy that suggests you should use a
25 future test year.

1 COMMISSIONER RUPP: However, if the
2 Commission decides that is the best policy for
3 moving forward, does Staff have the ability to do
4 the job correctly?

5 MR. WESTEN: I personally have an
6 incredible amount of faith in our Staff. I know
7 that we would do absolutely the best that we could
8 do. And I think that we would attempt to as we --
9 as is our mission statement, to present the best
10 neutral, most objective case going forward on the
11 information that we have.

12 COMMISSIONER RUPP: Okay. And then you
13 had stated to Commissioner Chairman on his earlier
14 -- Commissioner Chairman --- to Chairman Hall in
15 one of his earlier questions that Staff does not
16 have the mechanisms need to -- to do that.

17 MR. WESTEN: I -- yes. I don't think
18 there's a regulatory mechanism to do that. I don't
19 -- so, for example, Kentucky, which is an American
20 Water future test year jurisdiction, they have
21 regulations that explicitly state what information
22 must be provide to Staff, at what stage in the case
23 detailing the differences between the current
24 information and future information.

25 We don't have that kind of regulatory

1 mechanism here. So Staff, I think, can do it. And
2 I think they are absolutely willing to do that.
3 But they don't have that kind of regulatory
4 guidance. We don't have that schematic as
5 guidance.

6 We'd have to work on it, probably reach
7 out to other Commissions to see what they do and
8 try to go forward the best we can.

9 COMMISSIONER RUPP: So that's -- I guess
10 that's where I'm -- when you say you don't have the
11 mechanism. You have the ability to do it. You
12 just don't have a formula or a paragraph that says,
13 Do this, this and this?

14 MR. WESTEN: Right.

15 COMMISSIONER RUPP: Okay. But as the
16 Chairman said, there is, you know, a tracker for
17 capital, and you said there are other mechanisms.
18 So they do exist. You just have not used one in a
19 case, so, therefore -- is that what you're saying
20 is you don't have one?

21 MR. WESTEN: Commission -- or this Staff
22 doesn't have a history of using a future test year
23 and the -- the process that that -- that that
24 requires, yes.

25 COMMISSIONER RUPP: Okay. So -- so what

1 would you -- what you would you -- what would you
2 call your Staff's proposal?

3 MR. WESTEN: Well, the -- not looking at
4 the future test year part, we already use what's
5 known as a modified historic test year or an
6 updated test year, and that is the updated
7 information from the point of filing while the is
8 pending and then the true-up period. And, in fact,
9 the --

10 COMMISSIONER RUPP: So -- so that being
11 that, what would you call what you're proposing?

12 MR. WESTEN: The closest thing I would
13 call it would be a partially forecasted future test
14 year. There are such things as fully forecasted
15 future test years. I do not think that that is
16 what Staff would support at this point in time.

17 COMMISSIONER RUPP: So if we have the
18 authority, it's, you know, neighboring with the
19 national association, you said it's the best
20 policy, is -- is your hesitation or is Staff's
21 hesitation that it's just too much change too
22 quickly?

23 MR. WESTEN: You know, the reason why I'm
24 hesitating and making this facial expression,
25 Commissioner, is I don't think that it's -- I don't

1 think that that is the issue. I really do think
2 it's a -- it is a mechanism issue.

3 It's a -- it's a new -- I mean, Staff has
4 -- has reviewed this in the past, but we've never
5 actually done it in this way before. And I think
6 there is hesitation with a new process.

7 But just because it's a new process or
8 because it is a change, I don't think that's the
9 issue.

10 COMMISSIONER RUPP: So what does Staff
11 need to be comfortable? What do you -- what
12 mechanisms, what language -- what -- what does
13 Staff need to be comfortable that in the next rate
14 case this hesitation because it is new vanishes?

15 MR. WESTEN: Well, I think we'd like to
16 see how that works here. I mean, we've seen that
17 it works in other jurisdictions. I think having
18 the actual experience of it here to make sure that
19 it works would be useful for a future case.

20 But for this case, making sure that the
21 projections that the company has made are within
22 the realm of possibility, they're accurate, and
23 Staff agrees that they're accurate when we review
24 them, that the underlying factual arguments, the
25 underlying factual allegations that the company has

1 proposed of declining use, therefore, leading to
2 declining revenues is accurate once Staff completes
3 its audit.

4 The fact that the company has said that
5 their costs are increasing and their own testimony
6 they've stated that their costs have actually held
7 fairly level for the past several cases. So --

8 COMMISSIONER RUPP: Aren't those questions
9 that you would normally ask in a future test year
10 rate case?

11 MR. WESTEN: We think so, too. Right. So
12 that kind of -- I agree. That kind of information
13 is the information that as part of the audit we
14 want to confirm as accurate and, therefore, is an
15 accurate basis for making a future test year
16 projection.

17 COMMISSIONER RUPP: That's fine.

18 JUDGE BURTON: Okay.

19 COMMISSIONER COLEMAN: No. Thank you.

20 CHAIRMAN HALL: Judge, I do have -- I do
21 have one more.

22 JUDGE BURTON: Okay.

23 CHAIRMAN HALL: What is Staff's position
24 on the burden of proof to establish projections in
25 a future test year environment?

1 MR. WESTEN: That's a very good question.
2 We think it is the company's burden to prove to
3 establish the accuracy of those projections.

4 I think if Staff were to propose different
5 projections, it would be in response to those. As
6 a rebuttal, we would have to support that evident
7 -- evidentiarily.

8 CHAIRMAN HALL: So Mr. Cooper said that, I
9 believe, that if -- if a party disagreed with the
10 company's projections, they would have the burden
11 of production.

12 MR. WESTEN: Yes.

13 CHAIRMAN HALL: Do you agree with that
14 assertion?

15 MR. WESTEN: I agree that it is -- to the
16 extent that the burden of production means that if
17 a party puts forward a separate proposal different
18 from what the company has proposed as a rebuttal to
19 the company's proposal that they have a burden of
20 production to produce evidence to support that to
21 the extent that it is the company's burden to both
22 prove and persuade by proof of their case if their
23 evidence does not stand up and their prima fascia
24 case no longer stands, then they do not get what
25 they've asked for.

1 CHAIRMAN HALL: Okay. Thank you.

2 MR. WESTEN: Thank you.

3 JUDGE BURTON: So the Staff or other
4 parties could reasonably submit requests to
5 Commission for the scheduling perhaps a limited
6 data response times from the company or set --
7 again, excuse me, set deadlines for the party -- or
8 for the company to submit information to the other
9 parties?

10 MR. WESTEN: To -- for future information?

11 JUDGE BURTON: Yes. Right.

12 MR. WESTEN: Yes. I think as part of the
13 procedural schedule, I think we could as a group of
14 parties propose and agree on what information needs
15 to be provided when, how, between what parties and,
16 specifically, again, on a true-up case, what the
17 true-up hearing is specifically about, what
18 information that is really supposed to focus on,
19 what information needs to be updated and what other
20 information does not. And that way, we're not
21 re-litigating the case again.

22 I don't think anyone wants to do that, and
23 I think it's not a good use of our time. And I
24 think the parties can work together speaking on
25 behalf of what Staff believes it could work, could

1 be true to come up with what would be appropriate
2 for a true-up hearing.

3 JUDGE BURTON: Okay. And Staff is stating
4 that they believe that they can review the
5 information that is typical for a rate case of this
6 size, and if the Commission requested, or if the
7 parties ended up pursuing this under Staff's
8 recommendation of the future test year, that the
9 forecast issues with the Staff it has and with its
10 man hours and its schedule as it is without needing
11 additional resources?

12 MR. WESTEN: I think, yes, Staff is
13 willing to try. And we are going to do what we can
14 the best we can.

15 JUDGE BURTON: And would inform the
16 Commission if it wasn't capable?

17 MR. WESTEN: Yes, if for some reason
18 something would happen that we were unable to do
19 that, we would absolutely inform the Commission.

20 JUDGE BURTON: Now, you mentioned that
21 there -- legally, you believe the Commission is
22 capable of considering a future test year?

23 MR. WESTEN: Yes.

24 JUDGE BURTON: Do you think that there is
25 enough facts in the record since we only have the

1 direct testimony that was filed through the
2 Commission to make a determination now on whether
3 or not it will consider a future test year? Or
4 should that be part of the case in chief?

5 MR. WESTEN: I think that should be part
6 of the case in chief. I do not think there are
7 sufficient facts now as part of the record to
8 establish a future test year.

9 JUDGE BURTON: Okay. Now, under Section
10 393.270.4, the reference to the reasonable average
11 return upon capital actually expended, and you kind
12 of addressed this issue with stating that other
13 jurisdictions might try to ensure that the company
14 actually expends on the projects that it says, This
15 is why we need this money by saying that in a
16 report and order perhaps there will be a
17 restriction on swapping out of projects.

18 MR. WESTEN: Yes.

19 JUDGE BURTON: Is there any concern that
20 by doing that, the Commission is making a
21 management decision for the company?

22 MR. WESTEN: That's a very good question.
23 The only guidance I can give you is that in other
24 jurisdictions -- and, again, I'm looking at a very
25 limited number of other jurisdictions.

1 JUDGE BURTON: And this is just based off
2 New York, Tennessee and West Virginia or all the
3 others?

4 MR. WESTEN: My experience is based on a
5 couple other states, Kentucky and Pennsylvania.

6 JUDGE BURTON: Okay.

7 MR. WESTEN: That they actually made
8 restrictions on what can be adjusted. Now, they
9 don't -- they don't identify specific projects.

10 And if memory serves -- and I don't want
11 to misstate the law or application of other states,
12 certainly. But if memory serves, they will
13 restrict based on size, percentage of revenue,
14 percentage of the increase, some mechanism that
15 makes sure that major investments remain in place.

16 But as the example used by Mr. Cooper
17 about pumps in one location going another location
18 that -- that is not -- that is not caught up in
19 that mechanism.

20 JUDGE BURTON: Okay. But those -- those
21 states are potentially states that have specific
22 enabling statutes or regulations --

23 MR. WESTEN: Yes.

24 JUDGE BURTON: -- authorizing a future
25 test year situation?

1 MR. WESTEN: Yes. Yes. Kentucky,
2 Pennsylvania, Virginia, Hawaii, Illinois, Indiana.
3 I think there's one other that I'm forgetting.
4 They all have specific statutes that authorize the
5 use of -- of a future test year.

6 And -- and just to be perfectly
7 transparent, in Pennsylvania, they recently enacted
8 legislation that made it so that used and useful to
9 would not be a consideration as part of a fully
10 projected future test year.

11 So just as consideration, the use and
12 useful component, which is what 393.270 is all
13 about, I mean, it's a component that you have to
14 consider.

15 JUDGE BURTON: Okay. Thank you. Why
16 don't we take a -- a quick recess? And we'll
17 reconvene at 11:45.

18 (Break in proceedings.)

19 JUDGE BURTON: Okay. Let's go ahead and
20 go back on the record. The time is 11:49 right
21 now. Commissioner Kenney, are you there?

22 COMMISSIONER KENNEY: Yep. I'm here.
23 Thank you.

24 JUDGE BURTON: And the Commission plans to
25 take a recess at 12:45 or so. So at this point, I

1 believe we will hear from Mr. Woodsmall for MECG.

2 And you, I believe, have a presentation.

3 MR. WOODSMALL: Yes. And I believe I've
4 already handed it out, and it's up on the power --
5 on the -- on the monitor. So --

6 JUDGE BURTON: Okay.

7 ORAL ARGUMENT

8 BY MR. WOODSMALL:

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

12 As you know, MECG is a group of large
13 commercial and industrial customers. These
14 entities are situated in all three of Missouri
15 American's rate districts.

16 The rate increase requested in this case
17 in the future test year that underlies that request
18 will have a huge impact on these Missouri
19 companies.

20 This presentation is a little lengthy.
21 This is an incredibly important issue. It
22 represents a radical change in the way that
23 Missouri -- that rates are set in Missouri. And,
24 importantly, the customers don't believe that this
25 radical change provides them any benefits.

1 Instead, it represents nothing but
2 downside for customers and nothing but upside for
3 the utilities. So I'll ask you to bear with me
4 over the length of this presentation and invite
5 you, as always, to pop in whenever you have a
6 question.

7 So I wanted to put this future test year
8 request into context. This is on the screen, but
9 it's a little small. It's on the presentation that
10 I handed out, but it's a little small. But I also
11 handed this out, too.

12 I wanted to put this into context. While
13 Missouri American is requesting an overall increase
14 of 25.4 percent, this slide shows that many
15 customers will see a much larger increase given the
16 future test year request.

17 For instance, metered customers in the St.
18 Louis District will see an increase exceeding 48
19 percent. Similarly, customers in Warrensburg and
20 Joplin will see increases exceeding 30 percent.

21 As you can tell, this is a significant
22 increase. While Mr. Williams can speak more
23 directly for his clients and for OPC, what we are
24 talking about is not simply an increase on large
25 customers. It hits everybody.

1 The retired St. Louis grandparents will be
2 seeing a water rate increase approaching 50
3 percent. Similarly, the young couple in Joplin
4 that is just starting out will see a water increase
5 over 30 percent.

6 As you know, water is not simply a luxury
7 that people can do without. While we can reduce
8 the length of our showers, water is something that
9 we can't simply just turn off. Therefore, there is
10 no avoiding this mammoth rate increase.

11 So what role does the future test year
12 play in this mammoth rate increase? While we don't
13 know the exact number, Missouri American readily
14 admits that, quote, Over half, unquote, of the
15 investment in its rate case would not be part of
16 the case under a historical rate case.

17 Clearly, then, the future test year
18 significantly inflates the magnitude of Missouri
19 American's rate increase.

20 In order to understand what is being
21 discussed today, I want to give you a clear
22 understanding of how rate-making is done in
23 Missouri currently.

24 Traditionally, Missouri relies on a
25 historical test year. Thus, the utility files for

1 a rate increase that will be based upon historical,
2 not projected, costs.

3 In -- in order to make this as -- as
4 recent as possible, Missouri does true-ups. So
5 what happens is the utility files. And it's
6 typically based upon six year -- six months of
7 historical costs and six years -- six months of
8 forecasted costs.

9 We go through the case, and we get to the
10 true-up. And at that point in time, the forecasted
11 costs are replaced with historical costs. So
12 that's what happens in Missouri currently.

13 So take Missouri American as an example.
14 They filed on June 30th. What would happen is
15 we've heard Staff talk about a true-up through
16 December 31st.

17 We'd have six months of historical costs
18 forecasted for six months. When we got to the
19 true-up, those last six months of forecasted costs
20 would replace with historical costs. So Missouri
21 uses historical data.

22 Why are customers so insistent on historic
23 test years? The historic test year implements two
24 very important customer protections. First, the
25 historical test year as part and parcel of a

1 historical test year is the use of the, quote, used
2 and useful standard for consideration of rate base
3 investment.

4 Therefore, we are able to consider every
5 construction project of the utility and ensure that
6 the project is completed and providing service
7 prior to including those costs in rates.

8 The second important safeguard is the
9 reflection of the, quote, known and measurable
10 standard. Under this standard, costs are only
11 included in rates to the extent that they are known
12 to occur and are capable of being measured.

13 We don't include costs based upon some
14 speculation that it may occur. We don't incur --
15 we don't build in costs based upon some speculation
16 that inflation is going to increase it. Those
17 costs have to be, quote, known and measurable.

18 The use of both of these standards are
19 important customer safeguards that ensure just and
20 reasonable rates.

21 Importantly, through their use of a future
22 test year, Missouri American seeks to kick both of
23 these standards to the curb. Now, investment in
24 projects that aren't completed, aren't providing
25 service, aren't delivering benefits to customers,

1 those -- those investment dollars will be included
2 in rates.

3 Similarly, speculative costs, costs that
4 aren't capable of being measured are now included
5 in rates under a future test year.

6 Not surprisingly, each of the customers
7 here today believe that the future test year and
8 elimination of these safeguards, rates in Missouri
9 will most definitely go up.

10 So is Missouri in need of significant
11 change to its rate-making approach? We believe the
12 answer is no. And let me tell you how.

13 While Missouri American may think it's in
14 need after of a drastic change like a future test
15 year, debt rating agencies don't appear to agree.

16 Now, who are the debt rating agencies?
17 These are entities like Standard & Poor's, Moody's,
18 Fitch. And they have the job of rating the debt of
19 the Missouri utility and other utilities.

20 These entities look at all kinds of
21 things. They look at utility's operating risk and
22 other metrics. Through assessment, they implicitly
23 compare the operating environment, including the
24 regulatory environment of Missouri utilities.

25 These debt rating agencies are satisfied

1 with the support provided by the Missouri Public
2 Service Commission and the use of the historic test
3 year.

4 For instance, in its recent review of
5 KCP&L's debt, S&P called the Missouri regulatory
6 environment, quote, stable and consistent, unquote,
7 with, quote, reasonable rate case outcomes,
8 unquote.

9 Similarly, when reviewing Ameren
10 Missouri's debt, S&P rated the PSC as, quote,
11 strong, adequate, unquote. Neither of these
12 reviews raised concerns about the Missouri
13 regulatory environment or the use of historic test
14 years.

15 None of them noted an increased risk
16 associated with utilities operating in Missouri.
17 Clearly, debt rating agencies are satisfied with
18 the regulatory support offered by the Missouri
19 Commission.

20 Therefore, while Missouri American may
21 appear to believe that radical changes are
22 necessary, debt rating agencies don't agree.

23 What do these debt rating agencies say
24 about Missouri American specifically? That's
25 impossible to know. The debt rating agencies don't

1 write reviews just on Missouri American. Instead,
2 Missouri American is lumped with the other American
3 Water Works jurisdiction and included into one
4 review.

5 But the review for American Water Works
6 doesn't raise any cause for concern. When rating
7 American Water Works debt, S&P stated, quote, We
8 view American Water Works business risk as
9 excellent based on its monopolistic and rate
10 regulated water distribution business that provides
11 an essential service in regulatory jurisdictions
12 which we generally view as supportive of credit
13 quality, unquote.

14 Once again, these debt rating agencies
15 don't raise any concern with the manner in which
16 Missouri sets rates. And I would tell you that the
17 evidence tends to indicate that the Missouri
18 environment is very supportive of utilities.

19 In recent years, we've seen evidence from
20 the Missouri utilities which tend to support this.
21 Just last year, we saw a large, sophisticated
22 company out of Canada by Empire District Electric
23 for a 25 percent premium.

24 If there was a problem with Missouri
25 regulation, do you think this investor would come

1 in and buy Empire? That doesn't make sense.

2 We saw Laclede double down on its
3 investment in Missouri. They went and bought
4 Missouri Gas Energy. Again, if there was a
5 problem, they would look outside the state.

6 The fact that they are looking to invest
7 in Missouri tells you that there is no problem with
8 Missouri regulation.

9 Finally, KCP&L saw to buy Westar Energy
10 and is in the process of buying Westar. Kansas
11 regulation where Westar operates is virtually
12 identical to Missouri.

13 So the fact that you have KCP&L seeking to
14 invest in a historic test year environment tends to
15 indicate that there is not a problem with this
16 rate-making paradigm.

17 So we know what debt rating agencies think
18 of Missouri regulation, and we know because of
19 their actions what Missouri utilities think of
20 regulation here.

21 What has the Commission itself concluded
22 about Missouri regulation? Just last year, the
23 Commission embarked on a significant workshop to
24 consider necessary changes to the rate-making
25 approach.

1 In a report issued just eight months ago,
2 the Missouri Commission reached several important
3 conclusions.

4 For instance, quote, Missouri's current
5 regulatory structure has functioned very
6 effectively for over a century, and there is no
7 need for a massive radical overhaul.

8 Another quote. Over the last 100 years,
9 Missourians have enjoyed reliable, high quality
10 utility services at comparably low rates, and
11 Missouri IOUs have enjoyed reasonable profits,
12 unquote.

13 Finally, quote, Missouri's regulatory
14 structure has evolved significantly and effectively
15 over time to respond to changes in circumstances
16 affecting Missouri utilities. The modern modified
17 historic test year rate case also now includes
18 processes to update and true-up expenses well past
19 the end of the formal test year, end quote.

20 While the Public Service Commission
21 concluded that a radical overhaul is unnecessary,
22 Missouri American is now proposing a future test
23 year that even Staff characterizes as, quote, a
24 major departure from past practice, end quote.

25 So we have discussed Missouri regulation,

1 what it is, what safeguards are implicit in it,
2 what date rating agencies think of Missouri, blah,
3 blah, blah.

4 Let's move on to the crux of Missouri
5 American's request. What is a future test year?
6 As the NRRI reports notes -- and NRRI -- I should
7 explain this. You all know what NARUC is.

8 Well, NARUC has a research firm referred
9 to as NRRI. NRRI does investigations, reports,
10 puts out papers.

11 NRRI put out a report on future test
12 years. They said, quote, Using projections of cost
13 in revenues usually over a 12-month period during
14 which new rates would apply is the basis for rate
15 changes.

16 That's what a future test year is.
17 Instead of using historic data, you're using
18 projections. So how would it work in this case?
19 How exactly does Missouri American envision the
20 future test year working?

21 Missouri American intends to project an
22 average amount of rate base for the next 16 months.
23 That is one year after the date on which rates will
24 go into effect on this case.

25 Moreover, Missouri American intends to

1 project all other costs. Many costs, as Mr. Cooper
2 noted, would be simply reached by taking the cost,
3 the historic cost and applying an inflation factor.

4 So how do we believe that you should
5 evaluate a future test year proposal? We believe
6 that, like Commissioner Rupp said in a recent
7 workshop, such proposal should be evaluated with an
8 eye on the effect and Missouri's captive ratepayers
9 and ensuring that such proposals are balanced and
10 drive value to the captive customers.

11 (Video began.)

12 COMMISSIONER RUPP: This first -- kind of
13 getting into situations where I need to put out
14 information to people, whether or not my old
15 business, whether or not politics, whether or not
16 we're trying to educate people.

17 I was once told if you ever send out a
18 press release that the very first line you should
19 always add at very end, Who cares?

20 So whatever you put out there, you should
21 be able to answer that question of who cares. And
22 so when I look at all the stuff that we talk about
23 and all the issues that everybody brings forward, I
24 want everyone to kind of just remember to ask
25 themselves, Who cares?

1 And if it isn't the customer, then we're
2 probably barking up the wrong tree. If it's
3 something that only the utility cares about just
4 for them and their shareholders, it's probably not
5 balanced.

6 If it's something that only the energy
7 environmentalists care about, it's probably not
8 something that maybe is the best thing for
9 everyone.

10 So at the end of the day, when every time
11 we're hearing people talk, I'm going to sit in the
12 back of my head and I'm going to say, Who cares?
13 And I'm going to try and relate that to the
14 customer or to the ratepayer because, you know, my
15 mission statement, and I've tweeted this, I've
16 given talks about it, it's actually posted on my
17 door if you go up to our -- our floor.

18 And my mission statement for being a
19 Commissioner is as follows. As Commissioners, we
20 must drive value for the consumer. We must focus
21 on value and not least cost. We need to allow the
22 utility to make money but require performance. We
23 need to give the consumers what they want, which is
24 convenience, control and choice.

25 And so for me, that is the mindset that I

1 will look at any proposals, any ideas is, Who
2 cares? And does the customer care is No. 1.

3 No. 2 is, How does that fit in with the
4 mission statement that I believe is my purpose here
5 on that? So drive value. If you walk away from
6 anything, what does Commissioner Rupp care about, I
7 want you to drive value for the customer, for the
8 consumer. Because if you are driving value, then
9 all the regulatory change, all the -- the change in
10 everything that will fall into place because
11 everyone can understand that there's a value for
12 the ratepayer, and we all need to get on board and
13 get online to drive that value to the family's
14 kitchen table.

15 (Video ended.)

16 MR. WOODSMALL: So to answer Commissioner
17 Rupp's question, Who cares about Missouri
18 American's future test year proposal, the answer is
19 obvious.

20 JUDGE BURTON: Excuse me. Mr. Woodsmall,
21 could you speak into the microphone and make sure
22 it's on?

23 MR. WOODSMALL: Oh, sorry. So to answer
24 the question who cares about Missouri's future --
25 Missouri American's future test year proposal, the

1 answer is obvious. The utilities care.

2 This is underscored by the fact that
3 Ameren and KCP&L both sought to intervene in this
4 case after interviewing -- intervening in a rate
5 case before. The utilities care about this
6 proposal.

7 On the other hand, customers don't like
8 it. Every customer in this case opposed this. So
9 the answer is, Who cares? The utilities care. And
10 the customers don't.

11 The customers note that Missouri
12 regulation currently provides for safe and adequate
13 service at just and reasonable rates. So why the
14 need for the radical change?

15 The second of Commissioner's Rupp's, Does
16 Missouri American's future test year proposal drive
17 value to the customers? Again, simply by the fact
18 that every customer opposed this request is pretty
19 telling that this drives no value to the customers
20 of Missouri American. Bottom line, customers
21 believe that this proposal is not balanced.

22 So up till now, we've talked about things
23 in generalities. Let's talk with more specifics.
24 I want to address six specific deficiencies with
25 the future test year proposal.

1 First, I'm going to talk about findings
2 from the NRRI report. Second, I will address the
3 questionable legality of the future test year.

4 Thirdly, I will talk about the fact that a
5 future test year reduces the utility's incentive to
6 be efficient and productive.

7 Fourth, I will talk about utilities
8 historic inability to forecast costs in Missouri.
9 Fifth, I'll talk about how the future test year
10 necessarily results in the elimination of a known
11 and measurable and used and useful standard.

12 And six, I will talk about how historic
13 test years have resulted in just and reasonable
14 rates in Missouri.

15 In the customer's response, we noted some
16 of the conclusions reached by NRRI in its report on
17 future test year. Now, as I told you, NRRI is the
18 research arm of NARUC.

19 The NRRI report represents the
20 conclusions reached by this entity after an
21 extensive investigation by NRRI's Chief Researcher,
22 Ken Costello.

23 In contrast, Missouri American provides a
24 different NRRI document. The document provided by
25 Missouri American is simply a survey. NRRI sent

1 out some questions to just the states that used
2 future test years and got back and reached some
3 conclusions from that.

4 Noticeably, they didn't send it to the
5 other states that don't use future test years. So
6 it shouldn't surprise you if some of the
7 conclusions reached there are a little biased.
8 And this is the document relied upon by Missouri
9 American.

10 But there's some questions underlying
11 those states, and Commissioner Rupp kind of touched
12 about that -- touched on this.

13 The states that do use a future test year,
14 what -- what are the -- what's the situation? Was
15 it imposed on them by the General Assembly? Is it
16 used for all types of utilities? Is there a size
17 limitation for the utility? What other safeguards
18 are implemented as part of it? Did the State
19 previously use just test year rate-making? Or did
20 they provide for true-ups to reduce regulatory lag?
21 How fast have rates gone up after they adopted
22 future test year?

23 And, importantly, how large is the Staff?
24 New York, I went to a future test year, and I can
25 tell you the size of the New York staff is mammoth.

1 The future test year requires lots of resources.
2 You're not only looking at historic data, but
3 you're looking at their projections.

4 So can future test year be used in
5 Missouri without the General Assembly allocating a
6 significant increase -- increase in dollars so that
7 you can staff up to do a future test year?

8 And who will it be that suffers if there
9 aren't those resources? It's not going to be the
10 utility. It's going to be the customers that I
11 represent.

12 So looking at the NRRI report, NRRI
13 reaches this important conclusion, and it's a
14 little lengthy, but it's written here. Although in
15 theory this argument that is using future test
16 years because rates are set for a future period
17 seems undisputable, it ignores the reality that
18 forecasts are susceptible to error, and some costs
19 and sales elements are inherently difficult to
20 predict.

21 Another factor, as this paper stresses, is
22 that utilities would have incentives to present
23 biased forecasts that are not always easy for the
24 Commission Staff and Intervenors to uncover, quote.

25 Let me point out some of the specific

1 conclusions that supports the NRRI's negative view
2 of future test years.

3 First, NRRI notes that future test years
4 further exacerbates the information asymmetry that
5 exists in rate-making. Specifically, information
6 asymmetry makes it virtually impossible to properly
7 consider a utility's cost forecast.

8 NRRI notes, quote, Commissions are at a
9 distinct disadvantage relative to the utility in
10 interpreting and evaluating the utility's
11 performance. Commissions generally lack the
12 knowledge, for example, to detect when the utility
13 is efficient or inefficient, and the opportunities
14 for utility to see minimize costs, unquote.

15 I mentioned earlier that future test years
16 require great Staff resources. In addition, the
17 NRRI report reports that due to complexity of using
18 forecasts, future test year rate cases should take
19 longer.

20 The NRRI report talks about the fact that
21 rate cases general provide, quote, insufficient
22 time to thoroughly assess a utility's forecast,
23 unquote.

24 Given this, utilities have little chance
25 of, quote, getting caught, unquote, for hiding

1 inflated costs. And you heard Mr. Oligschlaeger
2 talk earlier about the one instance where Missouri
3 did a future test year.

4 They had no choice. It was when SWB --
5 when Southwestern Bell was spun off from AT&T.
6 Staff couldn't do it in eleven months. The
7 Commission had to extend it.

8 And even then, the forecasts were so bad
9 that there was never a rate increase after that.
10 There were only rate decreases. So the one
11 instance in which we have used future test year in
12 Missouri, customers suffered tremendously.

13 And not surprisingly, SWB now owns the
14 world, AT&T on the back of largely Missouri
15 ratepayers, but five states bought Ameri-Tech,
16 bought Nevada Tell, bought Pack-Tel, bought Bell
17 South, bought all the mobile companies. That all
18 started in Missouri.

19 So that is the repercussions if rates
20 aren't set right. You're relying upon a complaint
21 to go back and get it fixed isn't a real option.
22 You heard Mr. Oligschlaeger talk about that.

23 Finally, as we discuss in -- oh, I wanted
24 to go back real quick. Furthermore, as we
25 previously discussed, the NRRI report necessitates

1 rejection of the used and useful and known and
2 measurable standard.

3 As a result, NRRI concludes, quote,
4 Customers end up paying for the facility without
5 receive anything benefits from it, unquote.

6 Finally, as we discuss in greater detail
7 in our pleading, the use of a future test year
8 reduces the incentives for the utility to be
9 efficient and productive.

10 The NRRI report notes that, quote, Future
11 test years can have a negative effect on cost
12 efficiency. For instance, NRRI notes that a
13 utility would have a weaker incentive to control a
14 cost where that cost has already been imputed into
15 rates through a future test year.

16 As such, NRRI concludes that, quote, A
17 future test year would seem to score poorly in
18 achieving cost efficiency, unquote.

19 And I want to give you an example of this.
20 We've heard a lot of talk about what could the
21 Commission do if it built this future plant into
22 rates and the company didn't spend it?

23 While it might be an interesting question,
24 it's kind of a silly question. You're never going
25 to run into that situation. The utility is not

1 going to under-spend.

2 Faced with a complaint, faced with the
3 possibility of logs future test year in and future
4 cases, the first thing I'd tell my client if I was
5 representing the utility is spend, spend, spend.
6 You don't want to come in under because then the
7 Commission's going to hammer you.

8 So this is never going to happen. We saw
9 under historic test year KCP&L just did a billion
10 dollar refurbish of the Lacine power plant and came
11 in under budget.

12 Would that happen under a future test
13 year? Not a chance. They would come in on budget
14 or at least a little over budget. So the
15 possibility that they will come in under-budget,
16 it's kind of an academic argument because if I was
17 representing the company, if I was the management,
18 I would be saying, You make sure you don't come in
19 under-budget because we don't want to take a chance
20 on losing that future test year.

21 So the possibility of efficiency and
22 productivity gains that we see in historic test
23 years, those are out the window with future test
24 years.

25 As a result of all these shortcomings, the

1 NRRI report notes, quotes, Many states hold future
2 test years in deep contempt, unquote. Their words,
3 not mine.

4 Here I've provided some conclusions of
5 other states that have considered and rejected the
6 future test year. I won't read all these quotes,
7 but I've provided here for your convenience.

8 Briefly, Utah said, future test years,
9 quote, cause a dampening of the efficiency
10 incentive of regulatory lag playing to the
11 company's strength and control of critical
12 information and shifting of the risk of the future
13 to ratepayers, end quote.

14 Iowa, the implementation of the future
15 test year option would significantly increase costs
16 of rate-making. And, quote, will not necessarily
17 provide rates that more accurately reflect a
18 utility's cost of providing certify advice.

19 Similarly, a Nevada quote, a lengthy
20 quote, but they reject future test years and stuck
21 with historic test years.

22 Finally a Washington quote. Quote, This
23 approach reduces regulatory lag without burdening
24 ratepayers -- I'm sorry. Washington uses a
25 historic test year with a true-up like Missouri

1 does, and they're talking about that use of a
2 historic test year.

3 Quote, this approach reduces regulatory
4 lag without burdening ratepayers with unnecessary
5 costs determined on the basis of the more
6 speculative future test year approach to
7 rate-making that is used in some jurisdictions.

8 So states had rejected this. It came out
9 initially in the later '70s when inflation was
10 rampant and the utilities were saying, We cannot
11 earn our return. Inflation is eating us up. It's
12 18, 19 percent.

13 So it was discussed at that point in time.
14 Many utilities rejected -- or many Commissions
15 rejected it. So there is track record of other
16 states.

17 Let's talk about the legality. And Staff
18 talked about this some. And I venture to say
19 Staff's inquiry is completely wrong. Staff said,
20 and I believe the quote is, quote, no expressed
21 prohibition, unquote, against future test years.

22 I would agree with that. The problem is
23 that's not the inquiry. UCCM quote that says the
24 Commission is a creature of statute. And, quote,
25 it needs expressed statutory authority, unquote, to

1 do things.

2 So the inquiry is not is it expressly
3 prohibited. The inquiry is, is it expressly
4 allowed? And I would venture to tell you it's not.

5 And the example of that is 1979. The
6 Commission was using fuel adjustment clauses. It
7 was taken to Court. The Missouri Supreme Court
8 said, This argument was raised. The parties said,
9 there's nothing that stops us from doing it. And
10 Supreme Court said, Yeah, but there's nothing that
11 allows you to do it. And they struck down fuel
12 adjustment clauses for the next 20 years, 30 years.

13 So the inquiry is not is there express
14 statutory prohibition against future test years.
15 The proper inquiry is, is there expressed statutory
16 authorization?

17 And I think every party agrees they can't
18 point to anything that says there's expressed
19 statutory authorization.

20 The historic test years, on the other
21 hand, are firmly established. Talked about Section
22 393.270.4. It expressly states that the Commission
23 shall consider, quote, a return upon capital
24 actually expended. That's past tense. It's not a
25 return on capital that may be spent, that if we're

1 lucky will be put in. It's actually expended.

2 That is a historic test year.

3 And the Southwestern Bell Court in 1982
4 agreed that the use of, quote, past costs and
5 revenues can be ascertained. It an appropriate
6 rate-making method.

7 Other things lead us to believe that the
8 use of future test years are a questionable
9 legality.

10 Last year, the utilities propose Senate
11 Bill 190. Now, while a large section of that bill
12 only applied to electric utilities, the provision
13 that we talk about as the Commission toolbox was
14 not limited to solely electric utilities.

15 And that provision allowed for the
16 Commission to use forecasted test years. But that
17 Bill went nowhere. It died in the Senate, never
18 advanced out of the Senate.

19 But the question must be raised. If
20 future test years can be done, why was it included
21 in this Bill? It would have been unnecessary.
22 But, nevertheless, it was included in SB 190, and
23 it failed there.

24 So that fact can -- leads us to believe
25 that there is not express statutory authority for

1 future test years.

2 The next specific problem with future test
3 year, as NRRI pointed out, is that it reduces the
4 utility incentive to be productive and efficient.

5 I already pointed this out in my response
6 at page 9 of the customer's response. But we have
7 an analogy there, and I want to you think about
8 this.

9 Here is how I view a future test year.
10 Based upon their forecast, based upon their
11 projections, their beliefs, you're basically --
12 it's somewhat comparable to you giving your child
13 \$50 to go out on a Friday night.

14 You think that child's going to come back
15 with less than \$50? As I told you, the incentive
16 here is spend, spend, spend. That child's going to
17 spend it all. That child's going to come home sick
18 on cotton candy.

19 But that's the incentive here. If the
20 child only spent \$40, then the likelihood is the
21 next time around, you're going to say, I'm not
22 giving you 50. You didn't spend it last time. I'm
23 only giving 40.

24 So the incentive is to spend it. The
25 question that has to be raised, though, is could

1 the utility have come in at \$40? We will never
2 know.

3 Once you go to future test year, you lose
4 those efficiencies. Could the utilities have spent
5 less on pencils instead of \$50 on pencils? Could
6 they have spent 45?

7 We don't know. The bottom line, as NRRI
8 concludes, the incentive to be productive and
9 efficient is lost.

10 So let's look at the real life comparison
11 for Missouri American. For the past seven years,
12 Missouri American has obviously operated under a
13 historic test year environment.

14 As mentioned, under such an environment, a
15 utility has an incentive to be productive. And the
16 way it works is if they're productive and they
17 spend less, that goes right to their pocket. No
18 way for you to get it back. It's called
19 retroactive rate-making.

20 So if you set rates at a hundred dollars
21 and they come in at 92, they get to pocket those
22 \$8. That's the beauty of historic test years, that
23 they encourage them to be efficient.

24 So under that future test year, we see
25 this quote from Missouri American in their direct

1 testimony, Our ability to maintain the historic
2 test year O&M levels in this case at only slightly
3 above our 2010 levels proves the effectiveness at
4 our efforts and the resulting cost benefit to our
5 customers.

6 O&M costs haven't gone up in the last
7 seven years. Historic test year working. Now we
8 get to a future test year, and what does Missouri
9 American tell us? They're saying costs are going
10 to go up 2.1 percent a year. That would be 15
11 percent over seven years.

12 But they're projecting through inflation
13 and other adjustments that costs are going to go
14 up. Which is better for customers? A historic
15 test year or a future test year? The answer is
16 pretty obvious.

17 Let's talk about their ability to forecast
18 costs. This is in our response. As I mentioned
19 earlier, the way it works in Missouri, a utility
20 files generally six months of historic costs, six
21 months forecasted cost.

22 So the utilities are only forecasting six
23 months out. And then those forecasted costs are
24 replaced with historic costs. So we can pretty
25 much gauge from those past cases how have they done

1 forecasting costs for only six months.

2 And the answer is horrible. Here are six
3 different -- the last rate cases for all six major
4 utilities. And what you see here is cases like
5 Laclede.

6 Last case they had, they asked for a 48
7 million dollar increase. They settled for zero.
8 Obviously, they couldn't forecast costs.

9 GMO earlier this year asked for a
10 58 million dollar rate increase. When forecasted
11 costs were replaced with historic costs, they
12 settled for 3 million.

13 Who would have been hurt if we used a
14 future test year in the company's forecast?
15 Customers. They would have gotten 58 million
16 dollars, and the options would have been two-fold.

17 They could have spend, spend, spend to
18 justify that or they could have just pocketed the
19 money. Either way, customers are the ones that get
20 hurt.

21 Missouri American, same thing. Last case,
22 they asked for 48 million. They settled for -- or
23 I'm sorry. They asked for 51 million, and they
24 settled for 30. Use of their forecasts in the last
25 case resulted in their request being inflated by 67

1 percent.

2 Maybe another problem with the fact that
3 Missouri American's inability to forecast costs,
4 and that is, How do you forecast costs? How do you
5 forecast revenues if you don't know what historic
6 uses have been?

7 You've heard this last case out of the
8 clear blue sky late in the case, it was uncovered
9 that Missouri American had 90-some-odd thousand
10 meters that weren't working properly. Some weren't
11 showing any usage. How do you forecast your
12 revenues if your meters aren't working?

13 Staff's investigation made several
14 conclusions. But most of them support this. They
15 show nine -- they showed that 99,000 meters that
16 weren't working appropriately.

17 And Staff criticized Missouri American for
18 not being forthcoming with this problem. Missouri
19 American hid it. Only late in the case when they
20 were looking at maintenance did a Missouri American
21 representative reveal, yeah, we have a problem with
22 meters.

23 Then what happened to the guy? He's no
24 longer with the company. So I wasn't in the last
25 case, but if you have questions on this issue --

1 and this is important stuff, talk to Dr. Marke of
2 OPC. He was involved. He will tell you about the
3 faulty meters. He will tell you about every time
4 they turn around and they ask for usage data from
5 Missouri American, it's always changing.

6 So when Missouri American says, We haven't
7 collected our revenues in past cases, is it really
8 surprising? So if you have a question about usage
9 data, talk to Dr. Marke. He's familiar with this
10 stuff.

11 And this is all supported by NRRI, as I
12 told you. An NRRI quote, A few Commissions
13 reported continuing challenges with evaluating
14 utility forecasts and addressing utility incentives
15 for biasing their forecasts to favor a larger rate
16 increase.

17 So that's what we're seeing here.
18 Utility's inability to forecast. We have real life
19 examples in Missouri. NRRI reports the same thing.

20 And I'd point out, that's from the NRRI
21 survey. That's the document that Missouri American
22 relies upon has this conclusion that utilities
23 can't forecast and they bias their results.

24 I'm getting close to being done. So, as I
25 mentioned, future test years eliminate important

1 customer safeguards. NRRI pointed that out used
2 and useful standard by which you consider how many
3 investment dollars to include in rates, that's
4 thrown out the window with future test years. So
5 known and measurable standard out the window.
6 Certainty is replaced by speculation all to the
7 detriment of customers.

8 Finally, I want you to consider whether
9 Missouri regulation and the use of the historic
10 test year is leading to just and reasonable rates.

11 And I would tell you the evidence appears
12 to indicate that it is. The last several cases --
13 you can throw aside last KCP&L case that was
14 litigated.

15 Every major right case -- the last major
16 rate case for every major utilities in Missouri was
17 settled. Ameren settled their case earlier this
18 year. GMO settled their case. Empire, Laclede,
19 Missouri American all settled their cases.

20 If these companies are agreeing to a
21 revenue requirement, aren't they implicitly
22 agreeing that those are just and reasonable rates?

23 So historic test years are working in
24 Missouri. The utilities are admitting it
25 implicitly.

1 My conclusion, bottom line, rate-making is
2 working in America -- in Missouri. In America.
3 Make America great.

4 Utilities are earning healthy profits. We
5 saw that conclusion from the Commission. And
6 customers are receiving reliable service at just
7 and reasonable rates.

8 Debt rating agencies are saying it's
9 working. They're not noting any problems in
10 Missouri. They're not saying, you know, the
11 utilities are having problems delivering service.
12 They're not saying utilities can't access capital.

13 For all the debt rating assisting care,
14 everything's hunky dorey. So why make this change?
15 This change would represent, as staff quotes, a
16 major departure from past practice.

17 And the Commission just got done saying
18 eight months ago, We don't need these radical
19 changes. So bottom line, answering Commissioner
20 Rupp's questions, customers do not believe that
21 this approach is balanced, and it fails to drive
22 value for Missouri American customers. As such,
23 this proposal should be rejected.

24 I wanted to address a couple questions
25 that were asked earlier. Talk about how rates are

1 set in Missouri.

2 There was a quote from other cases that
3 rate-making is necessarily a predictive science and
4 that we're supposed to be setting rates for a
5 period in advance. And that's true. And we do
6 that.

7 What happens in Missouri is we use
8 historic data to do it. But it doesn't mean we're
9 not being predictive. What may happen is we have
10 costs that's going up.

11 Instead of using a test year of 12 months,
12 we may look at the last three months and multiply
13 by four. Those things are considered. Things may
14 be at a steady rate. We'll use a whole test year.
15 We might use one month times twelve.

16 We normalize. We annualize. Weather may
17 have been a drought. We normalize for that.
18 Weather normalization. You hear it talked about
19 all the time. Temperature, rainfall, all those
20 things are considered.

21 So while we use historic data, we do it
22 in such a fashion that we're hoping to lead to
23 rates that are predictive of the future.

24 There was talk earlier about a revenue
25 sufficiency mechanism and whether if we use a

1 future year we need the revenue sufficiency
2 mechanism. And Missouri American said that they
3 wanted both.

4 And I'll tell you the reason they want
5 both. They're not comfortable with their own usage
6 forecast. Use our forecast for usage, but we want
7 a revenue sufficiency mechanism in case we got it
8 wrong. We still need that revenue sufficiency
9 mechanism. So that shows you how little faith they
10 have in their only usage forecast.

11 The Judge asked some questions about
12 procedural complexity. Absolutely. A rate case
13 now -- you know what a rate case is. We do
14 historic data. We get it done in two weeks.

15 But that's what we're arguing about is
16 historic data and how to annualize and normalize
17 and those type of things.

18 We're adding a whole additional level of
19 complexity here. Not only historic data, but now
20 under Staff's proposal, we're going to be looking
21 at everything and saying, How should we forecast
22 this 17 months in the future, one year after rates
23 are into effect?

24 So the time for a rate case, the time
25 necessary as was obvious from the Southwestern Bell

1 divestiture case, the amount of resources, the
2 complexity goes through the roof. And I venture to
3 say the only party that's going to suffer from this
4 given we're going to ram-rod this thing through in
5 11 months, are customers. It is a level of
6 complexity that doesn't fit this rate case.

7 Talked about Staff using a standard of no
8 expressed prohibition and how the actual inquiry is
9 no expressed authorization.

10 Burden of proof. Burden of proof never
11 shifts. Once you have a case and burden of proof
12 is set, burden of proof never shifts.

13 So the statute says that the burden of
14 proof is always on the utility. So when we're
15 doing forecasts, that burden of proof related to
16 forecast, that never changes. That burden of proof
17 is always on the utility. Burden of persuasion,
18 something different. It shifts. But burden of
19 proof never shifts.

20 That was all my responses to all those
21 questions. Customers don't believe Staff's
22 proposal to just punt this, kick this down the curb
23 will work.

24 Missouri American initially didn't believe
25 it either. You look at Missouri American's initial

1 future test year motion, they said, Reason to act
2 expeditiously, said, Commission has to set a test
3 year early in the case. They have to do it. It's
4 always done that way.

5 Now, all of a sudden, everybody agrees
6 that we can just kick this down the curb.
7 Customers don't believe that. We need to know what
8 the test year is. We can't be sitting here
9 litigating based on this data and then this data
10 and then this data and then based upon future test
11 year predictions.

12 We need you to set a test year. If you're
13 going to do a future test year, better to know it
14 now than to know it at some point in the future.

15 So Staff has lots of resources. Public
16 Counsel doesn't. I don't. We need you to make
17 this decision. So don't take Staff up on its
18 invitation to kick this down the curb. You know,
19 they have the resources to do it. We don't.

20 We need a decision on this. So reject
21 staff's proposal. That was all I had. I know I
22 went short.

23 JUDGE BURTON: Thank you. The time is
24 currently 12:34. I don't know how many questions
25 the Commission has.

1 I was assuming we could recess at 12:45.
2 But if the Commission would like, we could answer
3 some questions now.

4 CHAIRMAN HALL: Good afternoon. If the
5 Commission were to adopt a future test year in this
6 case, would -- would you come back in the -- in the
7 rate case and ask us to reduce the ROE?

8 MR. WOODSMALL: Oh, absolutely. No
9 question.

10 CHAIRMAN HALL: Why?

11 MR. WOODSMALL: Because future test year
12 does nothing but shift risk from the utility to the
13 customers. All eventualities that may occur in the
14 next year, 17 months from when the hearing would be
15 but a year after the rates are set, all those risk
16 are shifted to the customers.

17 Risk that inflation will occur. Risk that
18 -- or the possibility that a project may come in
19 under budget. That is now gone, as I said, and the
20 incentive is to spend, spend, spend.

21 So risks are shifted, and the possible
22 upside of costs being less are now gone. So the
23 opportunity for the utility to earn its authorized
24 return probably earn more given that you're using a
25 future level of plant. You're immediately going to

1 have over-earnings. So risk is shifted. So ROE
2 must go down.

3 CHAIRMAN HALL: You -- you make the
4 argument that a future test year eliminates the
5 incentive to cut costs. And I'm not quite sure I
6 understand the argument in -- in your metaphor
7 where -- where the child gets \$50 to go to the
8 movies.

9 MR. WOODSMALL: Right.

10 CHAIRMAN HALL: Wouldn't the future test
11 year essentially be giving the kid 50 bucks and
12 saying they get to keep that 50 bucks regardless of
13 what they send?

14 MR. WOODSMALL: Right.

15 CHAIRMAN HALL: And so wouldn't that be --
16 wouldn't you have the same incentive to spend less
17 because the child gets to pocket what -- what he or
18 she didn't spend?

19 MR. WOODSMALL: If you look at it -- look
20 at it as a one-time situation, yes. But what
21 happens when the child comes in at 55?

22 JUDGE BURTON: Mr. Woodsmall, I'll just
23 interrupt and ask you to speak into the microphone.

24 MR. WOODSMALL: Oh, I'm sorry. Okay.

25 CHAIRMAN HALL: But isn't that the same

1 situation on historic? Because if -- if the
2 company spends less, then won't the Commission the
3 next time they come back award them less for that
4 line item so it's exactly the same?

5 MR. WOODSMALL: And that's the -- and
6 that's the exact reason they won't spend less.

7 CHAIRMAN HALL: But at the same -- why
8 doesn't that same logic apply for historic? I
9 mean, I'm sorry, for future because they get to
10 pocket the difference.

11 MR. WOODSMALL: And they take the
12 possibility of the Commission saying you raped the
13 customers, built rates too high, spent less and you
14 pocketed all that money. Therefore, we're going to
15 take the future test year. They have possibility.

16 CHAIRMAN HALL: But that's -- okay. I
17 think the argument -- I think there's the same
18 incentive for -- for contradiction.

19 MR. WOODSMALL: Well --

20 CHAIRMAN HALL: But let me -- let me --
21 let me move on. I mean, it seems to me that,
22 generally, and this is not 100% accurate, but,
23 generally, your criticism of future test year is
24 really a criticism of the implementation of future
25 test year.

1 For example, when you -- whether you talk
2 about the O&M levels -- and this is on page 11 of
3 your hand out because it's -- I'm not sure what
4 slide number it is.

5 But when you talk about the company's
6 historic test period, O&M levels are only slightly
7 above the 2010 levels.

8 MR. WOODSMALL: Right.

9 CHAIRMAN HALL: Why could that not be
10 evidence in a future test year case that they
11 shouldn't get any increase over their O&M levels
12 from 2010?

13 MR. WOODSMALL: It -- it would be.

14 CHAIRMAN HALL: So then if we do our job
15 right, then that's really not a criticism of a
16 future test year. It's the criticism of a possibly
17 implementation of a future test year.

18 MR. WOODSMALL: The major criticism of a
19 future test year is the fact that it is necessarily
20 built on speculation of what will occur in the
21 future.

22 That speculation doesn't exist in historic
23 test years. So it -- so there's that. There is --

24 CHAIRMAN HALL: But if we do our job and
25 we hear all of the evidence presented and make a

1 determination based upon that evidence and you --
2 and the other consumer groups provide enough
3 evidence that those projections are -- that the
4 company's projections are inaccurate, then -- then
5 the customers are not hurt by a future test year.

6 MR. WOODSMALL: Couple things I would say
7 there. Your statement presumes perfect
8 information.

9 And as we saw in the last case, perfect
10 information doesn't exist. Imagine a future test
11 year where we're talking about usage, and the
12 utility knows of a big company, ABC Company, that's
13 going to go into Joplin and increase usage X
14 amount.

15 We have to ask that exact right question.
16 I can tell you discovery on utilities is not a fun
17 thing. You better ask the exact right thing. They
18 have all the information.

19 And NRRI talked about this. Information
20 asymmetry. They have all the information. And by
21 God, we better ask the exact right question. We
22 better ask, Are there any big customers coming in?
23 When will they come in? What do you project the
24 usage will be?

25 They know all that stuff. They know about

1 Customer XYZ that's leaving, and they're certain to
2 tell us about that. But will they tell us all the
3 other things?

4 The other thing -- so that's the
5 information asymmetry part. The other part is the
6 resources. How much additional work does it take
7 to make sure you ask all those additional
8 questions?

9 So the fact that it is necessarily based
10 on speculation -- and speculation, you're going to
11 go to the entity that has the most information. So
12 that's our problem. We don't run into that with
13 historic test years.

14 So information, asymmetry, resources, used
15 and useful being thrown out, known and measurable,
16 those are all problems.

17 CHAIRMAN HALL: Do you -- do you believe
18 that there would be a matching principle problem if
19 the Commission were to take a future test year for
20 consumption and -- and I guess costs associated
21 with consumption in isolation from everything else?

22 MR. WOODSMALL: Absolutely. You --
23 matching principle is designed to look at
24 everything, cost, revenues, investment, all at a
25 specific point in time. If you start picking and

1 choosing, what are we going to reach out to get,
2 you have a matching problem. For instance --

3 CHAIRMAN HALL: What if, though -- and
4 this is just a slight variation of -- of that prior
5 hypothetical. What if we did a future test year
6 for everything but only determined that the
7 evidence was such that we could make a prediction
8 of -- of a consumption decline and did everything
9 else based on historic numbers?

10 MR. WOODSMALL: Let -- let me show you
11 where the matching principle comes into effect.
12 Let's say --

13 CHAIRMAN HALL: In the second
14 hypothetical?

15 MR. WOODSMALL: Yes. Let's say you assume
16 that usage is going to go down. Electricity is
17 going down with it. Chemicals are going down with
18 it. Billings are going down with it.

19 Customer comes in. You're adding a
20 customer. All those are now going up. What about
21 the investment to meet that new customer?

22 Everything is intertwined. You can't pull this
23 out.

24 The classic example of where you can do an
25 isolated adjustment is postage. We know postage

1 rates are going to go up two cents. It doesn't
2 affect anything else. You can do a known and
3 measurable adjustment to reach out to get that.

4 But when you start looking at other
5 things, they're all intertwined. One thing will
6 affect another which will affect another. So
7 trying to look at just usage and do a future usage
8 adjustment runs into the matching principle because
9 it is necessarily going to drag along and affect
10 other aspects of the utility's financials.

11 CHAIRMAN HALL: And the matching
12 principle, as you described it, is -- is required
13 by statute?

14 MR. WOODSMALL: No. No. I -- I've never
15 seen anything in a statute or rate case that says
16 you have to match everything. Matching
17 principle --

18 CHAIRMAN HALL: Because, in fact, we
19 don't. I mean, there are -- there are -- there are
20 -- I mean, every -- our modified future -- I'm
21 sorry. Our modified historic test year, we are
22 cherry picking -- picking and choosing, to some
23 extent, some -- some costs that we will project,
24 some that we won't.

25 MR. WOODSMALL: I don't agree with that.

1 We're not picking costs that we're going to
2 project. What we are doing is treating costs in
3 different manner to normalize them.

4 Some costs, we may use the test year
5 amount. Some costs, we may use three months times
6 four. So we are using historic date for
7 everything. We're treating costs in a different
8 fashion. We're not -- I -- I don't know of ever
9 reaching out into the future to set one cost.

10 CHAIRMAN HALL: Postage?

11 MR. WOODSMALL: Postage. We don't -- and
12 I've never seen that we reached out past, let's
13 say, the date rates went into effect. Let's say we
14 had a true-up, went through December 31st. Postage
15 increase on January 1st. We do that.

16 CHAIRMAN HALL: Labor costs when we have a
17 collective bargaining agreement going into effect
18 in -- during the next year?

19 MR. WOODSMALL: I -- certainly not past
20 the dates rates went into effect. Maybe between
21 the true-up and the date -- the implementation
22 date. But never to reach out past the date that
23 rates go into effect.

24 If you -- if you put in a wage increase,
25 don't you necessarily have to look at -- are we --

1 the staffing levels, too? So, again, things start
2 to implicate other factors.

3 CHAIRMAN HALL: I think I'm done. Thank
4 you.

5 MR. WOODSMALL: Thank you.

6 COMMISSIONER STOLL: No questions.

7 COMMISSIONER COLEMAN: No questions.

8 JUDGE BURTON: Okay.

9 COMMISSIONER RUPP: On page 9 of your
10 hand-out, you -- you quoted something from UCCM
11 585. What is that?

12 MR. WOODSMALL: So what happens in
13 Missouri, every time you have a decision from the
14 Court of Appeals or the Supreme Court, they have to
15 report their decisions.

16 1979 was -- UCCM was Utility Consumers
17 Council of Missouri versus the Public Service
18 Commission. It challenged the use of the fuel
19 adjustment clause.

20 COMMISSIONER RUPP: I was just looking to
21 see what UCCM was.

22 MR. WOODSMALL: Okay.

23 COMMISSIONER RUPP: Yeah. I didn't
24 recognize that one. You did a very good job of
25 selectively quoting the NRRI findings. Are you

1 aware of any actions that are taken by NARUC to
2 reverse its 2005 resolution affirming future test
3 year as the best practice?

4 MR. WOODSMALL: No. I'm not aware either
5 way because I don't go to NARUC or get involved.

6 COMMISSIONER RUPP: And that that is still
7 the -- the standing is that they believe that is
8 the -- the best practice. Do you think we should
9 ignore the guidance of NARUC in this situation?

10 MR. WOODSMALL: I think you should always
11 do what's best for Missouri. I made the analogy a
12 long time ago regarding something called FAZ 106.
13 If all the other -- if all the other State
14 Commissions jumped off the Empire State Building,
15 would you?

16 Do what's best for Missouri. If you think
17 historic test years work in Missouri, you're
18 staffed for it, the mechanisms are in place, do it.
19 Don't let other Commissions dictate how you do
20 things.

21 COMMISSIONER RUPP: Did you -- because
22 when I read the -- the -- the -- both studies, it
23 was basically -- I walked away with the ideathat
24 the majority of them that responded to the survey
25 were very pleased with future test years, and there

1 were a handful that had some issues with the
2 implementation of those.

3 But once they worked through that, they
4 were still relatively pleased -- pleased with that.
5 Is that not what you took from the reports?

6 MR. WOODSMALL: I -- one, I looked at the
7 survey with a great deal of skepticism because it
8 was only sent to Commissions that used a future
9 test year.

10 So, yeah, you're not going to hear much
11 from people -- and if you had the General Assembly
12 oppose a future test year and you -- are you going
13 to come out and say, No, it works. It doesn't
14 work. I'm sorry.

15 So I think it is the way the survey was
16 conducted leads you to take it with a grain of
17 salt. That said, there are statements in there
18 that would indicate that some Commissions look at
19 it favorably.

20 That raises the questions, too, What are
21 the staffing levels? New York has a Staff, I don't
22 know, five times the size of this Staff. Are you
23 going to, one, know if Staff is able to do the job
24 properly?

25 Well, I even know. You know, you're going

1 to get what you're going to get. But you're not
2 going to know how extensive the review was. So
3 resources, time, staffing decisions, how future
4 test years were imposed in the first place, why
5 they came about are all questions that I would
6 raise to anybody that talked favorably of a future
7 test year. I'd want to know much more than a
8 one-sentence conclusion.

9 COMMISSIONER RUPP: And then just the
10 final question is, on the video you showed, could
11 you get my from the other side next time?

12 MR. WOODSMALL: Really, the only way --

13 COMMISSIONER RUPP: I prefer that angle.

14 MR. WOODSMALL: The only reason I put that
15 in there, I wanted people to know as least I paid
16 attention to what you said.

17 COMMISSIONER WOODSMALL: A great American.

18 JUDGE BURTON: All right. The time is now
19 12:48. And as we had discussed previously, we're
20 going to go ahead and just take a recess right now.
21 And we will reconvene at 2:00.

22 I will ask the parties to identify what
23 other speakers we anticipate having oral
24 presentations this afternoon.

25 MR. WILLIAMS: Ma'am, Office of Public

1 Counsel intends to make a presentation.

2 JUDGE BURTON: Okay. Anyone else?

3 MR. STEINMEIER: I may or may not say a
4 few words.

5 JUDGE BURTON: Mr. Steinmeier. Okay.
6 Well, we'll let the parties make that decision when
7 we get back on the record.

8 I just wanted to get an estimate of how
9 much additional time we needed. So thank you,
10 everyone. And we will go off the record. And I
11 will see you at 2:00.

12 (Break in proceedings.)

13 JUDGE BURTON: It is a little bit after
14 2:00, and we are back on the record. I would,
15 again, remind everyone to please silence all of
16 your electronic devices.

17 Procedurally, I think we left off with the
18 remarks of Counsel for Midwest Energy Consumers
19 Group, and we were going to be hearing from the
20 Office of Public Counsel next.

21 It's my understanding, though, that
22 Staff's Counsel would like to note something for
23 the record?

24 MR. WESTEN: Yes, your Honor. We just
25 wanted to make a point clear in the record.

1 Earlier, during my presentation, Mr. Mark
2 Oligschlaeger was asked question about the
3 Southwestern Bell case from 1984 about a future
4 test year, and Mr. Oligschlaeger made the comment
5 that he did not believe that there were any further
6 rate increases after that.

7 It turns out there was one case with a
8 very small increase, relatively speaking, that
9 occurred immediately thereafter. And then the
10 further testimony about decreases from those cases
11 is what is according to the annual reports. And we
12 just wanted to clarify that point.

13 JUDGE BURTON: Okay. Does Mr. Woodsmall
14 or any other party wish to question
15 Mr. Oligschlaeger about that testimony or
16 correction? Okay.

17 MR. STEINMEIER: When was the small
18 increase?

19 MR. WESTEN: According to our annual
20 reports, it occurred in 1986, which was roughly --
21 would have been at that time two years after the
22 future test year case.

23 JUDGE BURTON: And do you have a case
24 number for that?

25 MR. WESTEN: I do not off the top of my

1 head, but I can find one and present it to the
2 parties.

3 JUDGE BURTON: Okay. Are there any
4 additional procedural matters that we need to
5 address before Mr. Williams takes the stand? Or
6 takes the podium. Okay. Seeing none, you may come
7 forward.

8 ORAL ARGUMENT

9 BY MR. WILLIAMS:

10 MR. WILLIAMS: Good afternoon. I've got
11 to change my script here. I said good morning when
12 I wrote this down this morning.

13 May it please the Commission. My name is
14 Hampton William. I'm the Acting Public Counsel and
15 appearing on behalf of Missouri American Water
16 Company's ratepayers pursuant to the statutory
17 authority.

18 I rise today alongside Mr. Woodsmall and
19 all other consumer parties to this case in
20 opposition to the company's request for a projected
21 test year.

22 As Mr. Woodsmall covered much of the
23 material in his argument, I will keep my comments
24 succinct and try to respond to a few things that I
25 think were raised in cross-examination earlier.

1 First, I'd like to point out just, again,
2 I think just a general burden of proof. It's
3 always on the movement to substantiate the claim by
4 clear and satisfactory evidence.

5 And in this proceeding right here, we're
6 talking about the company's request to establish a
7 future test year. So let's weigh the evidence with
8 respect to authority.

9 On one hand, you have the people's
10 position in support of the Commission' decades old
11 practice of using the historical test year and
12 true-up. This method has been examined and upheld
13 by the Supreme Court and the PSC versus Cross.

14 The Courts have identified the reason for
15 a historical test year in the Noranda Aluminum
16 versus PSC 356SW3D293 For the purpose that past
17 expenses are to be used as a basis for determining
18 what rate is reasonable to be charged in future
19 rates to avoid further excess, profits or further
20 losses.

21 That's the purpose of these rates, to make
22 sure that they are narrow, to avoid excess losses
23 or profits. The Missouri Court of Appeals also
24 identified the adoption and use of the historic
25 test year as a, quote, policy of the Commission in

1 Southwestern Bell versus PSC 65 -- 645SW244.

2 With respect to water and sewer cases,
3 this Commission, in its Orders, beginning with --
4 as recently as 2016 in WR-2016-0064 has stated that
5 rates are usually established based on a historical
6 test year. And historical test year is used
7 because the past expenses of the utility provide
8 the basis for determining what rate is reasonable
9 to be charged in the future.

10 That's true with Missouri American cases
11 dating back to -- I found exact an quote from a
12 2003 -- WR-2003-0500. The same language was
13 applied to a Lake Region Water Case, WR-2010-0111
14 And WR-2013-0461 as well as, again, the recent
15 Hillcrest case, which was WR-2016-0064.

16 While the company claims that there are
17 harms that are coming from the application or the
18 use of a historical test year, what Courts have
19 clearly found was that the methodology is
20 reasonable. The weight of the authority in the
21 present falls towards the use of this historical
22 test year.

23 Secondly, Missouri American points to the
24 use of a future test year in other jurisdiction as
25 an example of how other states can implement this.

1 But a quick review discovers that most exercise
2 this authority through an act of Legislation a
3 Court decision or even rule-making.

4 Both Indiana, Kentucky and, also,
5 Pennsylvania have effective statutes. In
6 Tennessee, there's an Appellate Court case which
7 authorizes the use of a future test year.

8 Both Hawaii and Virginia actually
9 promulgated codes to codify how a future test year
10 would be implemented. And New York, in 1977,
11 published a report as to how a future test year
12 would be effected before the Commission.

13 The point is that most of these
14 jurisdiction even cited by Missouri American have
15 explicit published authority, or at the very least,
16 have actually published a statement as to how a
17 future test year would be implemented.

18 In Missouri's case, there is no explicit
19 statutory authority authorizing a future test year.
20 There is no court case authorizing its use, nor is
21 there any rule-making or publication from this
22 Commission that states how a future test year will
23 be applied.

24 As we've heard today from the statements
25 of Mr. Westen and Mr. Cooper, right now, the plan

1 would be both in the idea of implementation of a
2 future test year itself. Or the proposal made by
3 Staff would be determined during this proceeding.

4 I think to one extent that OPC does agree
5 with Missouri American's filing is that this is a
6 decision that needs to be made now.

7 The sooner that we actually make a
8 determination as to what historical -- or what year
9 -- test year that we're going to be using, it will
10 certainly make the process much easier moving
11 forward.

12 Missouri American also states that it must
13 have a future test year to account for future
14 expenditures through 2019 as if there's a -- some
15 kind of limit on either future expenditures beyond
16 that period.

17 The argument that Missouri American is
18 using to support the use of a future test year
19 could well be applied to periods of time longer
20 than its current projected proposal.

21 If two and a half years is good or 2019
22 are good, well, why not five years? Why not ten
23 year? See, when we exaggerate -- exaggerate the
24 substance of the request, the underlying truth
25 itself is highlighted, the further away that we

1 move from the historical test year, the further
2 away that they move to project into the future, the
3 further we are removed from what is known and
4 measurable. If it's true for ten years, then it's
5 also true for two years.

6 During Mr. Woodsmall's presentation, there
7 was a discussion with respect to the use of -- the
8 use of data present in this case. I know that, at
9 this point in time, the company has actually filed
10 direct already. And Staff actually provided
11 Mr. Oligschlaeger as -- for questions and to
12 provide some response.

13 At this point in time, OPC would like to
14 do the following for Dr. Marke, to go ahead and
15 have him sworn in and to respond to questions.

16 JUDGE BURTON: Mr. Cooper?

17 MR. COOPER: Well, I guess I -- I would
18 object to that unless the Commission has a desire
19 to do it. I mean, we certainly had offered up
20 Mr. Jenkins a couple of times this morning, and
21 didn't seem to be any interest from the Commission.

22 And so this -- this oral argument is going
23 to take a greatly different turn if we're going to
24 start providing evidence and witnesses from all the
25 parties. I don't think it's something that's going

1 to finish today if we're going to do that. But --

2 JUDGE BURTON: Well, let me ask if the
3 Commission has any questions for Public Counsel's
4 witness.

5 COMMISSIONER STOLL: I really don't need
6 to.

7 JUDGE BURTON: Okay.

8 CHAIRMAN HALL: As of right now, I do not.

9 JUDGE BURTON: Then why don't we refrain
10 from offering him as a witness unless things change
11 and the Commission has specific questions for that
12 witness?

13 MR. WILLIAMS: Thank you. To move
14 forward, I'd like to address a few, I think, main
15 questions that at least I picked out from earlier
16 today.

17 During the exchange between Chairman Hall
18 and Mr. Cooper, the Chairman asked a question,
19 which was, Can you keep a historical test year for
20 a certain time and then employ -- for certain terms
21 and then employ a future test year on other terms?

22 And in Cooper's response, there was a --
23 kind of an equivocation for a future test year and
24 what we already do with true-ups.

25 The only difference I would observe is

1 that when we are using true-ups, the numbers we are
2 replacing it with are the known and measurable
3 numbers whereas a future projected test year, these
4 are not known. We are projecting well into the
5 future.

6 With respect to the Chairman's question on
7 the matching principles, you know, would it be
8 possible to extrapolate one type of term and apply
9 that either through a future test year or some
10 other mechanism.

11 My only concern would be to question
12 whether or not that raises a single issue
13 rate-making concern if that is -- is done. And,
14 actually, I believe it's the PS -- pardon me -- the
15 Public Counsel versus the PSC 397SW3D441.

16 There was a challenge made by the Public
17 Counsel's office on a MEEA rule-making that the
18 Commission pursued.

19 Ultimately, what the Court decided was
20 because there was specific statutory authority.
21 For the Commission to promulgate the MEEA rules,
22 the question of single issue rate-making would not
23 be in play.

24 Here, we're talking about engaging into a
25 procedure where there are no Commission rules and

1 there is no statutory authority. I think that if
2 we, again, work to separate certain expenses out,
3 there is a risk that it might actually run afoul of
4 the prohibition on single issue rate-making.

5 I think earlier in the -- earlier in the
6 conversation, Commissioner Rupp was soliciting a --
7 a name for the Commission's proposal. I would
8 suggest the test year two-step if that's amenable
9 to everyone.

10 The -- what the -- what's proposed by the
11 Commission staff, I think, is an attempt to
12 compromise on an issue that legally has been -- I
13 -- I don't think has a basis to proceed.

14 Keep in mind that what we're talking about
15 here is a argument from the company saying that if
16 we do not have future test years we're not allowed
17 to incorporate these projected costs, that any use
18 of a -- of a historic test year would inhibit their
19 ability to recover 250 million dollars
20 approximately of capital expenditures, which would
21 -- which is unreasonable.

22 Well, as we've pointed out here, the
23 Courts have said that the use of a historical test
24 year is reasonable. Our past application has been
25 reasonable as Mr. Woodsmall spoke to.

1 The company has entered into a stipulation
2 and agreements and incorporated these historical
3 test years in the past. So there's no basis on
4 which the company's request can proceed.

5 And, therefore, Staff -- and OPC does not
6 believe that there really needs to be a
7 consideration of any kind of compromise that's
8 proposed by Staff as I do believe that it will
9 bring up a lot of the procedural questions and a
10 lot of the kind of hardships that were brought up
11 in the discussion between Judge Burton and Dean
12 Cooper earlier with respect to timelines.

13 There was an exchange between Chairman
14 Hall and Mr. Woodsmall with respect to an analogy
15 that I think that I -- I hope I can try to clear up
16 on the importance and kind of the -- the
17 desensitization, I guess, that future test year may
18 provide.

19 You know, at the end of May, every State
20 Office goes to the Post Office, and they try to
21 stock up on materials. And the reason is that end
22 fortunate fiscal year, any money that is not spent
23 that has been allocated in the past would be,
24 obviously, subject for reduction in the future.

25 And so there is an incentive from an

1 office management standpoint to try to spend up
2 your budget to make sure that you are not open to
3 future reductions moving forward.

4 In the context here, what we're trying to
5 accomplish in setting rates is to determine what
6 the actual costs are. If in a prior rate case we
7 had said that, you know, O&M expenses were -- I
8 think we used \$50 in the past, the company would be
9 allowed to maintain its \$50 period up through its
10 next rate case.

11 But moving forward, projecting those
12 costs, what we would do at this point in time is
13 determine that, in fact, that cost them \$40, and
14 that's what we would use to set rates. We would be
15 using the historical information to most accurately
16 reflect what the cost of service is.

17 Using projected rates, there is a big
18 question mark there because so long as the company
19 spends what it needs and can create a data trail or
20 create a foundation which say why it would need
21 something in the future, even though it's not used
22 or useful or currently implemented, you know,
23 there's really no kind of cap on where you go from
24 that point.

25 To a question, I think, raised by

1 Commissioner Rupp with respect to the
2 recommendations of NRII (sic) or NARUC on the use
3 of the future test year, reading from the UCCM
4 case, 585SW2D41, the case was about the
5 consideration of the -- of use of the fuel
6 adjustment clause when there was no authority for
7 it.

8 But the Court ultimately decided that it
9 was unlawful to implement a fuel adjustment clause
10 absent authority.

11 Since the FAC -- and reading accordingly
12 here. Since the FAC has been used in regard to
13 industrial large commercial users for 60 years and
14 because other jurisdictions have approved them, it
15 has been positive by the movements that we should
16 use them and approve them in Missouri.

17 The Court goes on to say that, It is for
18 the Legislature, not the PSC, to set the extent of
19 the latter's jurisdiction. The mere fact that the
20 Commission -- that Commissions in other states
21 permit them is irrelevant if they are not permitted
22 under our statutes.

23 I believe that to say that if the -- the
24 fact that other states offer future test years, I
25 think the Courts have been clear on PSC's

1 jurisdiction that if they're not authorized by
2 statute here, which I think it's helpful to hear
3 what other states are doing, I think that there
4 would have to be a different process other than
5 this proceeding to be able to try to effectuate
6 this.

7 And with that, I will stand open for any
8 further questions. And I will offer Dr. Marke to
9 speak on any questions related to the ability to
10 project usage or customer usage in the future.

11 JUDGE BURTON: Thank you. Any questions
12 from the Commission?

13 CHAIRMAN HALL: I have no questions.

14 COMMISSIONER STOLL: No questions.

15 MR. WILLIAMS: Thank you.

16 JUDGE BURTON: I have a few questions.
17 You were so close.

18 MR. WILLIAMS: I should have -- I should
19 have started without you earlier, right?

20 JUDGE BURTON: Yeah. You should have.
21 Are there any legal restrictions that prohibit the
22 Commission from considering estimates or
23 projections or future costs when establishing
24 rates?

25 MR. WILLIAMS: Well, I think that it would

1 determine, I guess, on how the Commission would
2 weigh the information.

3 If it's for the express purpose of
4 determining what a rate should be, I think that
5 there would be either a limitation under, what was
6 it, 392.274 that all actual costs be used and
7 considered. I don't think that that --

8 JUDGE BURTON: Isn't that average?

9 MR. WILLIAMS: Well, I was going to say, I
10 don't think that that precludes the determination
11 or I guess the -- just for the sake of information
12 the consideration of that, of future information.

13 But, again, what the company is seeking
14 here is for us to rely on future projections. And
15 I think that there is -- it's -- at this point in
16 time without express statutory authority, I think
17 it's a bridge too far.

18 JUDGE BURTON: Do you think it's purely a
19 legal issue, or do you think some of this might be
20 factually based?

21 MR. WILLIAMS: Factually based in what
22 sense?

23 JUDGE BURTON: The -- the Commission needs
24 to evaluate the information presented by the
25 parties in a hearing to determine whether or not

1 the estimates for future forecasts are reasonable.

2 MR. WILLIAMS: Well, I mean, with respect
3 to the Commission's authority to -- to hear
4 arguments or take evidence, I think the Commission
5 would have the authority to hear the information,
6 take the information.

7 I think the question would be how the
8 Commission would then seek to apply that
9 information. And what -- what my position is is
10 that without either, you know, express authority,
11 which is specifically saying that there will --
12 that -- either there's not kind of the specific
13 length between what is actual or what's -- what's
14 currently being used or consumed in the state that
15 it's -- it's a bridge too far.

16 JUDGE BURTON: Well, based off of that
17 analysis, is there anything that you can point to
18 in Staff's recommendation that you can say right
19 now the Commission should flat out refuse because
20 there's no legal authority or factual questions?

21 MR. WILLIAMS: For Staff's recommendation?

22 JUDGE BURTON: Yes. At this point.

23 MR. WILLIAMS: This is with respect --
24 yeah. At this point, I can tell you that any
25 objection that I would have to Staff's

1 recommendation is based strictly on either an
2 implementation level. I think one of --

3 JUDGE BURTON: Procedure concern.

4 MR. WILLIAMS: That's a procedural
5 concern. The point is that -- and I -- here's the
6 other reality, too, that I think this oral argument
7 has presented today.

8 There's not a firm plan either presented
9 by the company as to how to implement a future test
10 year. And while we do have an outline from staff
11 as to how it could pretty much accomplish it, when
12 there was either clarification, the answer was,
13 Well, we can either -- determine a few of these
14 details in subsequent proceedings.

15 The -- I would have to go back and I think
16 provide a little more analysis as to whether or not
17 there are either process concerns on the timeline
18 with respect to implementation or inclusion of
19 rates and ensuring that we actually have enough
20 time to actually get the 30-day period for any
21 notice provided on the authorization of any rates.

22 That would be a concern. I've not had an
23 opportunity do that at this point in time. I'll be
24 happy to file either subsequent information or
25 subsequent application.

1 But it goes back to a point that
2 Mr. Woodsmall raised, which was that in other
3 proceedings, in fact, in the AT&T proceeding -- I
4 guess Southwestern Bell proceeding, excuse me,
5 before the Commission that an extended period of
6 time was added onto the rate case to allow.

7 And I think that by the time we actually
8 start putting pen to calendar as to what might be
9 required to accomplish Staff's proposal, that would
10 have to be considered as to whether or not it can
11 all be accomplished in the 11-month time span.

12 JUDGE BURTON: I realize I'm asking you to
13 shoot from the hip here. But just while you're up
14 here, can you think of anything that the Commission
15 could direct either through the procedural
16 scheduling order or through a separate order that
17 would help facilitate the parties getting access to
18 information or easing any concerns about the time
19 frame and the scheduling?

20 MR. WILLIAMS: With respect to Staff's
21 proposal?

22 JUDGE BURTON: Yes. For instance, I
23 suggested maybe saying that, you know, set
24 deadlines that the parties come up with, what
25 information they need and by when, setting

1 deadlines for when the company would submit actuals
2 to replace their projected numbers for 2017 and the
3 true-up, limiting the amount of time for data
4 responses. Is there -- is there --

5 MR. WILLIAMS: The answer is, at this
6 point in time, I do not have a specific suggestion
7 with respect to what procedurally could be done to
8 help accomplish a more expedited process.

9 But I would point out to the -- you know,
10 we're in this proceeding because the company moved
11 to use a future projected test year. And if, in
12 fact, it's the Commission's decision to not use
13 that, our recommendation is use the historical test
14 year we've used for everyone else because it will
15 not create some of these concerns with respect to
16 administrative and procedural implementation as
17 the --

18 JUDGE BURTON: Isn't that part of the
19 something that the company and Staff also
20 recommended, that we will use the --

21 MR. WILLIAMS: Well, and Staff -- the
22 company recommends it today. I don't think that
23 was recommended any other --

24 JUDGE BURTON: I believe it was in the
25 reply.

1 MR. WILLIAMS: Okay.

2 JUDGE BURTON: But, also -- well, let me
3 ask this. The company indicated that some of the
4 projected forecasts for expenses, some of that
5 could potentially be included in -- or eligible for
6 infrastructure system or replacement surcharge.

7 And there was also comments or suggestions
8 that it could possibly -- a tracker could be used
9 for those plants processes and upgrades that
10 wouldn't be eligible for ISRS inclusion. Would you
11 agree with that for those two statements?

12 MR. WILLIAMS: Well, at this point in
13 time, our final position with respect to the ISRS
14 would be not to allow it.

15 On a strictly procedural question, if -- I
16 -- I would have to decline to provide an answer as
17 to whether or not the use of a tracker or an ISRS
18 would kind of achieve, I think, the efficiencies
19 that you're seeking to accomplish.

20 JUDGE BURTON: Well, my point is that all
21 of those issues would potentially be addressed, and
22 the parties could dispute it and battle it out
23 during a rate case, correct?

24 MR. WILLIAMS: I mean, certainly so. I
25 mean, but I will point out that, at that point in

1 time, we would not only be inviting testimony and
2 scrutiny on the actual numbers or what has been
3 included in the case or the true-up itself, but
4 then we will be raising new issues.

5 And to -- to any extent that that is, in
6 fact, creating either more problems or more -- I
7 should say more burdens in the future, I -- I
8 believe that -- again, we're working from a
9 position without a, you know, track history,
10 without a rule.

11 And I believe that even to the extent that
12 all parties are, you know, actively engaged to work
13 towards adoption of what has -- what Staff has put
14 together, there's -- there will, I'm sure, be
15 disagreements with respect to certain -- certain
16 elements of that.

17 And I believe that those disagreements may
18 raise concerns that kind of put up unnecessary road
19 blocks for the procedure itself.

20 JUDGE BURTON: All right. The consumers
21 recommended the Commission utilize a test year for
22 the 12 months ending December 31st, 2016, correct?

23 MR. WILLIAMS: Yes.

24 JUDGE BURTON: And, also, with the true-up
25 through November or December of 2017, correct?

1 MR. WILLIAMS: Yes.

2 JUDGE BURTON: So what would essentially
3 be in dispute for the parties right now in the
4 presentation that we're hearing today is just some
5 discussion of whether or not the Commission should
6 allow Staff's recommendation to also leave
7 additional time at the hearing phase to consider
8 those potential estimates in future costs beyond
9 2017.

10 MR. WILLIAMS: Well, I mean, I will say
11 that Missouri American still has its -- its active
12 application and request for future test year out.
13 So I believe --

14 JUDGE BURTON: Hold on one moment.
15 Commissioner Kenney? Commissioner Kenney?

16 COMMISSIONER KENNEY: Yes. I'm here.
17 Thank you.

18 JUDGE BURTON: Okay.

19 MR. WILLIAMS: Back to the point, while --
20 what we would be introducing into the actual case
21 itself would not only be consideration as to what
22 should or should not be included in the true-up and
23 to have those numbers brought forward, but then we
24 would also be adding in the latter as to what we
25 should or should not be dealing with future

1 projected cases or specific issues.

2 I believe that the position that the
3 consumers, including OPC, have put forth shows that
4 there's no legal basis for the consideration of
5 those future or -- cost inclusions of those future
6 expenses, and, therefore, there would be no reason
7 for an order which would say, Let's consider this
8 issue in several months to be put forward.

9 JUDGE BURTON: Okay. Thank you. I don't
10 have any further questions. Are there any
11 additional questions from the Commission?

12 CHAIRMAN HALL: No.

13 COMMISSIONER STOLL: No.

14 COMMISSIONER RUPP: No. Thank you.

15 MR. WILLIAMS: Thank you.

16 JUDGE BURTON: All right. Were there any
17 other consumer respondents who wish to present
18 opening statements -- statements to the Commission?

19 All right. All right. Seeing none,
20 right now, we have the hearing transcript scheduled
21 for delivery tomorrow. We are not expecting any
22 briefing schedule.

23 I'll see if the Commission is needing any
24 additional time. I don't believe we will need any.
25 And the Commission will consider the motion and the

1 response and the arguments made today. Are there
2 any additional matters we need to address while we
3 are on the record?

4 All right. Seeing none, I want to thank
5 everyone for their attendance and their
6 participation, and we will see you at the end of
7 the week for the procedural schedule. We are now
8 adjourned.

9 (The proceedings were concluded at 2:45 p.m. on
10 August 7, 2017.)

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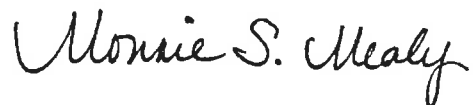
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REPORTER'S CERTIFICATE

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
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 _____, 2017.



Monnie S. Mealy, CSR, CCR #0538
Registered Professional Reporter

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