

IN THE MATTER OF MAWC

THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

June 3, 2015

Jefferson City, Missouri

Volume 1

In the Matter of the)
Petition of Missouri -)
American Water Company)
For Approval to Change) File No. WO-2015-0211
Its Infrastructure)
System Replacement)
Surcharge (ISRS))

DANIEL JORDAN
SENIOR REGULATORY LAW JUDGE.

ROBERT S. KENNEY,
DANIEL Y. HALL,
Commissioners.

REPORTED BY:
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IN THE MATTER OF MAWC

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IN THE MATTER OF MAWC

1 (Exhibits 1 through 4 marked.)

2 JUDGE JORDAN: Good morning, everyone.
3 I have now unmuted. The Commission is calling the
4 action in File Number WO-2015-0211. And the
5 caption of this case reads as follows: This is in
6 the Matter of the Petition of Missouri-American
7 Water Company For Approval to Change Its
8 Infrastructure System Replacement Surcharge, also
9 known as an ISRS. That is the acronym.

10 I'm Daniel Jordan. I'm the regulatory
11 law judge assigned to this action. We're here for
12 an evidentiary hearing on the merits of this
13 application.

14 I'm going to start by asking everyone to
15 silence their cell phones. I'm not going to
16 require you to turn them off, because they
17 occasionally prove useful. So I am silencing my
18 cell phone right now.

19 And I will also ask everyone -- I will
20 remind everyone to use the microphone when
21 speaking. It's a largish room and sound sometimes
22 gets lost.

23 I understand that there are no
24 preliminary matters that we need to take up before
25 we get into entries of appearance. Is that

IN THE MATTER OF MAWC

1 correct?

2 MS. MAYFIELD: That's correct, Your
3 Honor.

4 MR. COOPER: That's correct.

5 JUDGE JORDAN: Thank you, Counselors.

6 Then let's begin with entries of
7 appearance, and we'll start with the Applicant.

8 MR. COOPER: Dean Cooper from the law
9 firm Brydon, Swearingen & England, P.C., appearing
10 on behalf of Missouri-American Water Company. The
11 court reporter has the address.

12 JUDGE JORDAN: Thank you.

13 And for Staff.

14 MS. MAYFIELD: Your Honor, Cydney
15 Mayfield for Staff. And I have previously provided
16 my information to the court reporter.

17 JUDGE JORDAN: Thank you.

18 And for the Office of Public Counsel.

19 MS. BAKER: Thank you. Christina Baker
20 appearing on behalf of the Office of Public Counsel
21 and the customers. And I have also provided my
22 information to the court reporter.

23 JUDGE JORDAN: Thank you very much.

24 I understand the parties plan to waive
25 cross-examination of the witnesses. Do we have

IN THE MATTER OF MAWC

1 all -- do we have all the exhibits marked?

2 MS. MAYFIELD: I believe so, Your Honor.

3 MR. COOPER: Well, I think we may just
4 need to identify which exhibits are which numbers,
5 but...

6 JUDGE JORDAN: That's fine. Okay. I
7 did want to mention something about scheduling
8 before we begin, because I want to make sure I
9 don't forget it at the end. That has to do with
10 the date for briefing, which is the briefs --
11 according to the schedule that Staff and the
12 Applicant filed, briefs will be due on the 12th of
13 June. And that would leave, I count, 17 days
14 before the proposed effective date of the tariffs.

15 Given that there are only two agendas
16 scheduled between those two dates, that may
17 reduce -- depending on how the Commission decides
18 this action, that may reduce the time for filing an
19 application for rehearing as to an order approving
20 compliance tariffs. If that's what the Commission
21 orders, that's the way it goes. So just reminding
22 everyone that that is the case. There's been no
23 objection to that schedule, so I take it there is
24 no objection.

25 And, with that, I believe we are ready

IN THE MATTER OF MAWC

1 for opening statements, unless anybody has anything
2 else first.

3 Not seeing anything, let's have the
4 opening statement of Missouri-American Water
5 Company.

6 MR. COOPER: Thank you, Your Honor.
7 Before I get started, I want to hand out a document
8 that contains the statutes that I'll be citing
9 during my opening statement. It's certainly not
10 anything that I will offer into evidence, but
11 merely a recitation of those statutes and a rule
12 that I will be -- will be discussing.

13 Unlike many hearings that I've appeared
14 in, it's my belief that there's no significant
15 factual dispute in this case. The testimony filed
16 by Missouri-American Water Company and the Staff
17 really provides no controversy to three what I
18 believe are primary facts in this case. One, that
19 25,892,662 is the amount that equals 10 percent of
20 Missouri-American's base revenue level approved by
21 the Commission in Missouri-American's most recent
22 general rate proceeding; second, that MAWC's
23 current request for 1.9 -- excuse me, \$1,919,991 in
24 additional ISRS revenue is associated with eligible
25 infrastructure system replacements; and, three,

1 that the development of Missouri -American's current
2 ISRS included \$1,665,202 of reconciliation related
3 to previous under recovery or under collection of
4 ISRS dollars.

5 That leaves for the Commission, in my --
6 in my opinion, an issue of statute and rule
7 interpretation; that is, whether the reconciliation
8 amount should be included in determining how the
9 revenue requirement relates to the cap.

10 Missouri -American, of course, believes that it
11 should not.

12 If Missouri -American is correct, then
13 its full \$1.9 million request should be included in
14 the new ISRS rate. If Staff is correct, only
15 \$254,789 of that request should be included in the
16 ISRS rate.

17 The Court of Appeals Western District,
18 in the context of a natural gas ISRS statute, has
19 stated that the obvious legislative intent of the
20 ISRS statute is to allow the utility to timely
21 recover its costs for infrastructure system
22 replacement projects by way of a rate adjustment
23 outside of a general rate case.

24 Staff's interpretation of the statutes
25 would thwart the legislative intent based on prior

1 failure of the rate design. In other words,
2 because of the inexactness of the rate design
3 process and Missouri-American believes declining
4 usage of its customers, Staff would deny
5 Missouri-American timely recovery of costs
6 associated with its infrastructure system
7 replacement projects.

8 It is -- again, it is
9 Missouri-American's position that the statutes do
10 not intend for the ISRS cap to apply to a
11 combination of the ISRS costs and the revenue
12 reconciliation amounts.

13 Before you I believe the first statute
14 that's cited in the document I handed out is
15 393.1003(1), which contains I guess what I would
16 refer to as the cap language. You'll see in that
17 provision that the adjustments to which the
18 limitation applies are the costs for eligible
19 infrastructure system replacements. ISRS costs are
20 defined as depreciation, expenses, and property
21 taxes that will be due within 12 months of the ISRS
22 filing. There's no mention in the statute of
23 amounts necessary to reconcile previous under or
24 over collection of ISRS revenues. The statute does
25 refer to, let's see, petitions to establish or

1 change ISRS rate schedules. Well, again, a
2 reconciliation is not a change. The statute refers
3 to reconciliation as an adjustment.

4 Elsewhere in the ISRS statutes a company
5 is limited to two changes within a 12-month period.
6 A reconciliation hasn't been deemed to fit within
7 those changes. Within the Commission's rules
8 there's a description of establish, change,
9 reconcile listed as three separate things. So,
10 again, we believe that the statute does not intend
11 for reconciliation to be a part of that cap
12 question.

13 Further on down the sheet I provided to
14 you, there's the description of 393.1006.5(1),
15 which states that an ISRS shall be calculated based
16 upon the amount of ISRS costs that are eligible for
17 recovery during the period in which the surcharge
18 will be in effect and so on. Again, there's no
19 mention of the use of revenue reconciliation
20 amounts in the calculation of the ISRS costs.

21 Reconciliation is treated completely
22 separately in Section 393.1006.5(2), which is
23 before you on the second page, but in relevant fact
24 talks about the fact that at the end of each
25 12-month calendar period the water corporation

1 shall reconcile the differences between the
2 revenues resulting from an ISRS and the appropriate
3 pretax revenues as found by the Commission for that
4 period, and then ultimately ends, as I mentioned
5 before, in terms of an adjustment of the ISRS,
6 something different than the establishment or the
7 change of the ISRS.

8 I'd also mention that there's reference
9 to appropriate pretax revenues. The definition of
10 appropriate pretax revenues does not include
11 anything concerning the reconciliation amounts. It
12 talks about three items, none of which are
13 reconciliation amounts.

14 The statute and the Commission's rules
15 further recognize differentiation between the
16 recovery of ISRS costs and the revenue
17 reconciliation amounts. Section 393.1006.6(1)
18 states that a water corporation that has
19 implemented an ISRS pursuant to the provisions of
20 the ISRS shall file revised rate schedules to reset
21 the ISRS to zero when new base rates and charges
22 become effective for the water corporation
23 following a Commission order establishing customer
24 rates in a general rate proceeding, and so on.

25 Now, having said that, revenues

1 reconciliation amounts do not go to zero in the
2 rate case. Commission rule -- again, that's
3 provided on the sheet I handed out --
4 4 CSR 240-3.650(17) indicates that if an over or
5 under recovery of ISRS revenues, including
6 Commission-ordered refunds, exists after the ISRS
7 has been reset to zero, that over or under recovery
8 shall be tracked and considered in the next ISRS
9 filing after the rate case. So, again, the rules
10 deem the ISRS amounts to be something different
11 from -- from the reconciliation amounts and treat
12 them differently.

13 Staff's approach would deny
14 Missouri-American the opportunity for recovery of
15 ISRS costs based solely on the fact that prior ISRS
16 rates were set assuming a customer usage level
17 greater than that which Missouri-American
18 experienced, resulting in the nonrecovery of
19 authorized ISRS costs in prior periods.

20 Staff uses this previous nonrecovery to
21 really further the nonrecovery by adding both the
22 currently-authorized ISRS costs with the
23 unrecovered prior costs to assess the application
24 of the cap. That approach would result in
25 Missouri-American's nonrecovery of, as I said,

1 1.6 million and some change in revenues that's
2 really associated with eligible infrastructure
3 system replacements that have been made that are
4 completed, are in service.

5 Missouri-American believes that Staff's
6 interpretation of the ISRS statute is contrary to
7 the obvious legislative intent, as stated by the
8 Court of Appeals, and, therefore, erroneous and
9 should not be followed by the Commission.

10 Because I also have to, essentially,
11 hedge my bets in this matter, we have also
12 requested that should the Commission agree with
13 Staff's interpretation, that the Commission
14 consider an order that allows the company to book
15 that \$1.6 million of unrecovered ISRS in a
16 regulatory asset for consideration in a future rate
17 case or the first ISRS after the next rate case.
18 We believe that that is consistent with the
19 provision that's provided in the Commission's
20 rules. It's a little different timing, I would
21 acknowledge, than what's talked about in the
22 Commission's rules. But I don't think that the
23 rules necessarily contemplated that we would
24 already know the under recovery amount at this
25 stage, as we do in this case.

1 Thank you. And if you have any
2 questions, I'm available for those.

3 JUDGE JORDAN: Thank you, Counselor.
4 Commissioner Hall.

5 COMMISSIONER HALL: Good morning,
6 Mr. Cooper.

7 MR. COOPER: Good morning.

8 COMMISSIONER HALL: Is it safe to say
9 that the reason why we are here is because -- or at
10 least one of the reasons why we're here is because
11 of declining consumption?

12 MR. COOPER: Certainly the Company
13 believes that to be the case.

14 COMMISSIONER HALL: That if -- if
15 instead of using the historic test year we had used
16 some kind of future test year in the last rate case
17 to take into account declining consumption, then we
18 wouldn't have a dispute here today; is that
19 correct?

20 MR. COOPER: I don't know that I can say
21 that that's necessarily the case. I think it would
22 help. I think it would -- it would mitigate the
23 size of the dispute. But we will probably end up
24 with three years between -- between rate cases.

25 COMMISSIONER HALL: Well, let's say that

1 our future test year was spot on, that we -- that
2 we nailed the consumption decline.

3 MR. COOPER: If it was spot on, yes, we
4 would not have a dispute then.

5 COMMISSIONER HALL: So let's -- let's --
6 hypothetically speaking, let's say in -- in the
7 next rate case we do some type of future test year
8 and let's say that our crystal ball is amazingly
9 accurate and we are spot on -- or, actually,
10 let's -- let's say that consumption -- the
11 consumption decline is not what we anticipated; it
12 actually was a reduced -- there was a consumption
13 decline, but it wasn't what we anticipated.

14 MR. COOPER: We assumed a greater
15 decline --

16 COMMISSIONER HALL: Right.

17 MR. COOPER: -- than what was
18 experienced. Okay.

19 COMMISSIONER HALL: Would your statutory
20 interpretation inure to the benefit of the company
21 in that scenario or would it inure to the benefit
22 of ratepayers?

23 MR. COOPER: I'm not sure it would be to
24 the -- necessarily to the benefit of either one. I
25 think that the ratepayers would continue to be

IN THE MATTER OF MAWC

1 whole in that situation, because the reconciliation
2 would still be used to reduce the amount of the
3 ultimate ISRS rate to be paid by the customer.

4 So I think -- I think in that situation
5 maybe it would be to the benefit of both, because
6 the Company would -- would view itself as
7 recovering all of its ISRS costs and, to the extent
8 it over recovered those in prior periods, the
9 customer would get the benefit of that. So I think
10 it would --

11 COMMISSIONER HALL: When would the
12 customer get the benefit?

13 MR. COOPER: Within the reconciliation.
14 So on a yearly basis the ISRS would be adjusted,
15 according to the statute, to provide for that --
16 that prior over recovery, I believe, in your
17 hypothetical.

18 COMMISSIONER HALL: So Staff is taking
19 the position that if the Commission agrees with the
20 Company that the Company will over recover on the
21 ISRS, they will -- they will -- they will collect
22 more than the 10 percent cap. Is that your
23 understanding as well?

24 MR. COOPER: I know they've taken that
25 position. We would quibble with them a little bit,

1 because the words collect and recovery have been
2 used. Well, we're -- we're here partially because
3 the Company hasn't collected or recovered what the
4 rate was designed to produce. So --

5 COMMISSIONER HALL: So you --

6 MR. COOPER: -- I guess I'm breaking a
7 little bit with you because of that situation. I
8 don't know that -- and, again, because of the
9 declining usage that's been experienced. Even if
10 the rate is set where the Company would like to see
11 it set, I don't know that the Company will
12 necessarily collect more than the 10 percent
13 amount.

14 COMMISSIONER HALL: Well,
15 hypothetically, let's -- let's say that that did --
16 that did result, that collections came in and
17 exceeded the 10 percent, do you think there is
18 statutory authorization for us to put a tracker on
19 that -- on those receipts and -- and account for
20 them at the next rate case or is that the -- is
21 that the Commission rule that you pointed to at the
22 end of your --

23 MR. COOPER: Yes. Yes, I believe that
24 the Commission rule provides for that, both
25 directions. I -- I've talked in terms of a

IN THE MATTER OF MAWC

1 regulatory asset because, I mean, we're looking to
2 book things that we think are under recoveries.
3 But I think if they were over recoveries, it would
4 be a regulatory liability and would equally apply.

5 COMMISSIONER HALL: That's all I have.
6 Thank you.

7 MR. COOPER: Thank you.

8 JUDGE JORDAN: I don't have any
9 questions from the other commissioners. So thank
10 you.

11 MR. COOPER: Thank you.

12 JUDGE JORDAN: In the order of opening
13 statements that I have is the Office of Public
14 Counsel going next.

15 MS. BAKER: May it please the
16 Commission. Recovery of costs by a regulated
17 utility in Missouri is normally based on a
18 historical test year basis. However, Missouri
19 statute has provided utilities with certain
20 exceptions to this rule. The Infrastructure System
21 Replacement Surcharge, or ISRS, statutes
22 contemplate such an exception. Instead of
23 requiring utilities to spend money on certain
24 infrastructure replacement first then seek recovery
25 in rates, the statute provides the utility the

1 ability to have a surcharge whereby customers pay
2 in advance. The benefit to the utility is great.
3 The benefit to the customer is debatable.

4 Since these costs are future costs, the
5 statute provides for the surcharge to be based on
6 an estimate of future infrastructure costs. In
7 order to provide a mechanism to rein in the effects
8 on the customers and to try to seek a balance, the
9 statute provides for an ISRS revenue cap
10 calculation. The statute provides for all of this
11 to be completed between a set cycle of rate cases
12 to try to verify the amount of the actual
13 infrastructure costs.

14 As an exception to the rule in Missouri,
15 Public Counsel asked that the Commission interpret
16 the ISRS statute in the most narrow way reasonable
17 as a customer protection. Customers have no say in
18 the exact business decisions by Missouri-American
19 and should not be seen as a bottomless pit of cash
20 flow.

21 Therefore, Public Counsel agrees with
22 Staff's position that the amount of ISRS revenues
23 authorized by the Commission associated with the
24 reconciliation of prior under or over collections
25 should be included in the revenue cap calculation

1 for Missouri -American.

2 Public Counsel also agrees with Staff's
3 position that Missouri -American should not be
4 allowed to record a regulatory asset for any ISRS
5 costs determined to be above the revenue cap
6 provided by the statute. And Public Counsel
7 believes that to do otherwise would subvert the
8 customer protection of the revenue cap, tipping the
9 balance unreasonably in Missouri -American's favor,
10 which is not the reason for the statute.

11 Thank you.

12 JUDGE JORDAN: Questions from the bench?
13 Chairman.

14 CHAIR KENNEY: Just one, Ms. Baker.
15 Thank you. What is your understanding of the
16 rationale behind the 10 percent revenue cap that
17 was written into the statute?

18 MS. BAKER: It's my understanding that
19 because there was -- there are many mechanisms for
20 Missouri -American to be made whole, mainly the
21 original view of that they have the ability to come
22 back in for a rate case at any time and the fact
23 that the revenues of what they're going to spend in
24 the future is -- is an estimate, it keeps the
25 amount low that's put into the surcharge in the --

1 maybe a reasonable amount so that customers aren't
2 paying more in their surcharge than they are in
3 their regular rates. It connects those two things
4 together.

5 CHAIR KENNEY: So is it your position
6 and would you agree then that if we adopted Staff
7 position -- Staff's position and left unrecovered
8 about \$1.6 million or whatever it is and didn't put
9 into regulatory asset, that's just money
10 Missouri-American would never recover?

11 MS. BAKER: I mean, they could come in
12 for a rate case at any time. And as a matter of
13 fact, they have filed a notice that they are coming
14 in for a rate case. These things will be looked at
15 if they're within the test year.

16 CHAIR KENNEY: Well, presumably they're
17 not in the test year; that's why they want to
18 record it on a regulatory asset. So if that is the
19 case, you will agree that they just will never
20 recover that money?

21 MS. BAKER: If it's outside of the rate
22 case, it is possible, yes. But they could have
23 come in -- you know, if they saw this -- and I know
24 that this was even brought up in their last ISRS
25 case. And if they thought that that was something

1 that was a gamble, they could have come back in
2 right then.

3 CHAIR KENNEY: Because they control the
4 timing of the --

5 MS. BAKER: Because --

6 CHAIR KENNEY: -- filing?

7 MS. BAKER: -- they control the timing.

8 CHAIR KENNEY: Okay. Thank you.

9 JUDGE JORDAN: Commissioner Hall.

10 COMMISSIONER HALL: Good morning,
11 Ms. Baker.

12 MS. BAKER: Good morning.

13 COMMISSIONER HALL: Commission Rule
14 4 CSR 240-3.650(17) that Mr. Cooper referred to
15 this morning, what is the purpose of this rule in
16 your --

17 MS. BAKER: Let me grab the --

18 COMMISSIONER HALL: -- your information?

19 MS. BAKER: -- the paper that he gave us
20 so that I have the exact thing.

21 243.650(17).

22 COMMISSIONER HALL: Um-hum. Yes.

23 MS. BAKER: Okay. That does give the
24 ability to track the over recovery after it's been
25 set to zero within the test year of the previous

1 case.

2 COMMISSIONER HALL: It gives the
3 Commission the authority to do it. It doesn't
4 require it. Is that your position?

5 MS. BAKER: Yes.

6 COMMISSIONER HALL: So it gives us the
7 authority to make an over recovery a regulatory
8 liability and an under recovery a regulatory asset
9 in the next -- in the next rate case?

10 MS. BAKER: It gives the authority to
11 take that into account in the next rate case, yes.
12 It doesn't -- it doesn't automatically say that
13 it's going to be recovered or not recovered in the
14 next rate case.

15 COMMISSIONER HALL: Right. But it
16 establishes a process by which recovery is possible
17 in the next rate case?

18 MS. BAKER: Yes.

19 COMMISSIONER HALL: That's all I have.
20 Thank you.

21 MS. BAKER: Thank you.

22 JUDGE JORDAN: I have no questions from
23 the other commissioners. Thank you very much.

24 MS. BAKER: Thank you.

25 JUDGE JORDAN: The opening statement of

1 Staff.

2 MS. MAYFIELD: May it please the
3 Commission and the Honorable Judge. I bet if I
4 were to ask this room who in here enjoys playing
5 board games, I would probably get a lot of takers
6 and a lot of people raising their hands. I was
7 playing my favorite board game the other day,
8 Monopoly, with my six-year-old son, Dalton, and for
9 the first time I was struck by some of the
10 significance of some of the spaces on the board.
11 And in case you've forgotten what Monopoly looks
12 like, I've actually brought a Monopoly board.

13 JUDGE JORDAN: Counselor, can you move
14 that over a little bit to my right, which I think
15 would be your left. Further. And I think we're
16 in. Very good.

17 MS. MAYFIELD: Perfect. So just in case
18 you're wondering why I busted out a Monopoly board
19 in the middle of our hearing, I realize that since
20 1933 Parker Brothers has recognized two utilities
21 as monopoly properties on the board. The one of
22 significance to this particular hearing happens to
23 be the water works.

24 Now, we are all aware that the game of
25 Monopoly is named after the economic concept of

1 monopoly, which is the domination of a market by a
2 single entity. In our game setting our players
3 move around the board collecting properties and
4 collecting rents from their opponents, with the
5 ultimate goal of driving the other players into
6 bankruptcy, leaving one monopolist in control of
7 the entire economy.

8 So why am I talking about Monopoly
9 again? Because that is exactly what
10 Missouri-American Water Company is. It is a
11 regulated monopoly and, as such, this Commission is
12 tasked with the responsibility of ensuring that the
13 behaviors of this monopolist do not lead to the
14 demise of the other players, in this case our
15 ratepayers.

16 And just like the game of Monopoly has
17 mechanisms to prevent players from passing go and
18 not collecting \$200, our ISRS statute also has
19 mechanisms designed to prevent utilities who
20 utilize the ISRS from exercising their monopoly
21 power to collect more than a statutorily-set cap of
22 10 percent on revenues derived from an approved
23 ISRS.

24 Why are these protected mechanisms so
25 important? Because unlike a general rate case

1 where all aspects of the.

2 Company's operations, its revenues,
3 expenses, the establishment of rate base, return on
4 equity, are scrutinized to the nth degree, the ISRS
5 is a single-issue ratemaking tool allowed --
6 allowing very limited review by Staff and other
7 parties of the revenue that is allowed to be
8 charged in the customer rates.

9 As you will see in the direct and the
10 surrebuttal testimonies of the witnesses, Mark
11 Oligschlaeger for Staff and Jeanne Tinsley for
12 Missouri-American, the parties are in agreement as
13 to what that 10 percent cap on the ISRS revenue
14 should be. And you've already heard that from
15 Mr. Cooper's opening statement, that the parties do
16 agree on what that figure is. To reiterate, that
17 amount is \$25,892,662. Therefore, the most this
18 Commission can authorize MAWC to recover in its
19 revenues under the current ISRS is \$25,892,662.

20 Now, this is where the parties'
21 agreement starts to divide. The difference between
22 Staff and Missouri-American boils down to what
23 amount of total revenues can be collected under the
24 ISRS. We already know what the cap amount is, and
25 I keep reiterating the figure of \$25,892,662, and

1 there's just no dispute. But if the Commission
2 were to adopt Missouri-American's argument in this
3 case, the amount of revenues authorized by the
4 Commission as part of the ISRS rate would exceed
5 the 10 percent statutory cap. And this is the
6 heart of the matter. It is a legal question, and
7 it is one this Commission is tasked with answering.

8 Within the statute creating the ISRS,
9 there are two protected mechanisms designed to
10 control the amount of ISRS recovery that a utility
11 can have before they are required to file their
12 general rate case to reset those ISRS revenues to
13 zero.

14 The first protected mechanism is found
15 in 393.1003(1) and is what we've been referring to
16 as that 10 percent cap. It directs the Commission
17 as follows, and I quote: An ISRS on an annualized
18 basis must produce ISRS revenues of at least
19 \$1 million but not in excess of 10 percent of the
20 water corporation's base revenue level approved by
21 the Commission in the water corporation's most
22 recent general rate proceeding. To reiterate, the
23 parties agree on that figure, \$25,892,662.

24 But the second protected mechanism
25 placed in the statute comes in the form of a

1 reconciliation mechanism, which is found at
2 393.1006(5)(2) and reads as follows, and I quote:
3 At the end of each 12-month period that an ISRS is
4 in effect, the water corporation shall reconcile
5 the differences between the revenues resulting from
6 an ISRS and the appropriate pretax revenues as
7 found by the Commission for that period and shall
8 submit the reconciliation and a proposed ISRS
9 adjustment to the Commission for approval to
10 recover or refund the difference, as appropriate,
11 through an adjustment of an ISRS.

12 This issue of how to treat the ISRS
13 revenues associated with the reconciliation or
14 received revenue is the key point of disagreement
15 between Staff and Missouri-American. Staff takes
16 the position that the entire amount of the ISRS
17 revenues authorized by the Commission at any point
18 in time, including revenues associated with
19 reconciliation of prior ordered ISRS amounts,
20 should be included in the ISRS revenue cap
21 calculation. This ensures that the ISRS cap
22 calculation takes into account all ISRS revenues
23 authorized for collection from customers in
24 determining the upper limits that should be placed
25 on the form of single-issue rate recovery.

1 Additionally, this interpretation of the
2 statute follows the rules of statutory construction
3 in construing the statute in a way that does not
4 result in an unreasonable or unnecessary result,
5 meaning why put a cap limitation in there at all if
6 there were ways to just simply and easily get
7 around it.

8 Just as this Commission did in the
9 Ameren fuel adjustment clause matter, a reading of
10 the statute that conforms to the legislative intent
11 to limit contingencies and variables not expressly
12 envisioned within the scope of a
13 legislatively-authorized interim rate adjustment
14 tool like the ISRS may only be remediated, if at
15 all, in a general rate case. In short, as Public
16 Counsel iterated in its opening statement, if
17 Missouri-American wants to recover its lost
18 revenues above this cap limitation, that recovery
19 may be had in the filing of a general rate
20 proceeding.

21 And I want to be very clear here. Staff
22 is not saying no to the recovery of the items
23 requested in Missouri-American's ISRS filing, and
24 it is not saying that what Missouri-American files
25 in its application for recovery is not and are not

1 ISRS-eligible items, as defined by the statute.
2 What we are saying is that, according to the
3 statute, the items eligible for ISRS recovery have
4 hit that protected cap mechanism. And while those
5 revenues may be recoverable, the ISRS is not the
6 right place, and this is just simply not the right
7 time.

8 When a utility hits that 10 percent cap,
9 then the utility has an alternative recourse to
10 come in with its general rate case filing and
11 resetting the ISRS to zero. In such an instance
12 any under collection at that time in the ISRS is
13 woven back to the utility's base rates and
14 recovered in customer rates.

15 Since the establishment of the ISRS in
16 2003, which has been 12 years, this is the first
17 time that a utility eligible to receive ISRS
18 recovery has come close to hitting this 10 percent
19 protected cap. The ISRS is keeping utilities
20 investing in infrastructure replacement, while at
21 the same time phasing out the need for general rate
22 case filings. And, remember, without the statutory
23 authorization allowing single-issue ratemaking
24 recovery, these investments and the recovery on and
25 for them would not be permitted.

1 Therefore, when a statute expressly
2 authorizes an exception to standard ratemaking
3 practice such as our ISRS, close scrutiny should be
4 given to that intent of that statute, and attempts
5 to expand beyond its clear meaning should be
6 carefully evaluated. Close scrutiny should be
7 given to the express limitations in that statute as
8 well.

9 So what can this Commission authorize in
10 this current ISRS case? To date the Commission has
11 authorized Missouri-American to recover \$25,637,873
12 under its current ISRS, leaving the Commission the
13 ability to authorize up to an additional \$254,789
14 in additional ISRS revenues before the 10 percent
15 cap is hit. This \$254,789 is associated with
16 qualified ISRS plant investment. And that is what
17 Staff would request this Commission do, authorize
18 \$254,789 in additional ISRS revenues for this
19 current ISRS filing. That position is consistent
20 with the statutory intent found in 393.1003.

21 Lastly, I want to touch upon
22 Missouri-American's request to establish a
23 regulatory asset for the under recovered components
24 of its ISRS request, if Staff's ISRS rate increase
25 recommendation is approved by this Commission.

IN THE MATTER OF MAWC

1 Tying us back to our Monopoly example
2 over here, beautiful Monopoly board,
3 Missouri-American is essentially asking the
4 Commission to draw a chance card in the event you
5 agree with Staff that the cap calculation should
6 include the under collection of revenues component.
7 Missouri-American's hope is that this chance card
8 acts like a get out of jail free card, allowing
9 Missouri-American to avoid having to sit out a turn
10 or two and missing out on collecting Monopoly
11 rents. However, this request to book an ISRS
12 expense as a regulatory asset goes counter to this
13 Commission's treatment of ordinary capital
14 expenditures designed to provide safe and adequate
15 service, and it goes counter to the ISRS statute
16 itself.

17 MAWC points to language found in the
18 ISRS statute at 393.1006(2) as providing the
19 authority for the Commission to grant the booking
20 of an ISRS reconciliation amount as a regulatory
21 asset should a utility hit the 10 percent cap found
22 earlier in the statute. But to read the ISRS
23 statute in this manner is to ignore legal precedent
24 coming out of the Western District of Missouri.

25 In the case In Re the Matter of the

1 Application of Laclede Gas Company versus Office of
2 Public Counsel, a case decided in January of 2014,
3 the Western District, in examining the ISRS statute
4 on a matter of first impression, found very clearly
5 that an ISRS -- or that the ISRS statute never
6 refers to more than one ISRS; and no matter how
7 many times the ISRS is changed between rate cases,
8 there is only one ISRS rate for each customer class
9 and the ISRS surcharge is recovered via a
10 single-rate element on the customer's bill.

11 To permit the booking of expense above
12 the 10 percent cap would violate the clear mandate
13 that only a single ISRS is contemplated by the
14 statute. In this case an ISRS is an ISRS is an
15 ISRS. It doesn't change its stripes. This
16 includes authorized amounts by the Commission, as
17 well as subsequent reconciliation by the utility.

18 Finally, when utilities seek approval to
19 defer costs rather than charge them to expense, the
20 question is always asked whether the costs in
21 question are extraordinary in nature and would
22 recording these costs have a material impact on the
23 Company's financial results for the period in
24 question. This is a standard question asked when
25 utilities request special treatment of an expense.

1 And in this case, as you will see, there has been
2 no such claim made, no such evidence advanced by
3 Missouri-American.

4 So where do the requests for deferral
5 stop and when do they begin? Is it proper to
6 permit the utility to keep coming back in and keep
7 requesting deferral of expenses under the ISRS for
8 three or more years without restriction? Then why
9 put a cap in there at all if that is the intent of
10 the statute? Such an accumulation of deferrals
11 also acts, in effect, to absolve the utility of the
12 responsibility to file for general rate relief to
13 reflect its actual cost levels in rates charged to
14 its customers.

15 To summarize, there are rules to this
16 version of utility monopoly. Those rules are set
17 forth to act as protective mechanisms to limit the
18 possible abuses of the monopoly power the utility
19 enjoys. Each of you acts as a banker in the game,
20 ensuring that the players play by the rules. The
21 rules state that the ISRS surcharge is subject to
22 limits on the upper ends of the revenues that it
23 will produce in relation to the last base rate
24 amount. The Commission may not approve an ISRS
25 that falls outside of those limits. A 10 percent

1 limit has been stated before, and it is not in
2 dispute by the parties.

3 The Staff is asking this Commission to
4 grant this ISRS application in the amount of
5 \$254,789. It is also Staff's position to deny
6 permitting the booking of any expense not permitted
7 by the ISRS as a regulatory asset. To do so would
8 violate the clear intent of the statute that only a
9 single ISRS exists, permitting the utility to break
10 the rules and to win by chance.

11 Thank you. And I'm open for questions.

12 JUDGE JORDAN: Questions from the bench?

13 Mr. Chairman.

14 CHAIR KENNEY: Yeah, just a couple.

15 Thank you.

16 MS. MAYFIELD: You're welcome.

17 CHAIR KENNEY: What's the cite of that
18 case, the Western District case?

19 MS. MAYFIELD: The citation for the case
20 that I cited is 417 S.W. 3d 815, and it's a 2014
21 case out of the Western District Court of Appeals.

22 CHAIR KENNEY: So if we -- I'll just ask
23 the same question I asked Ms. Baker. If we agree
24 with Staff's position about \$1.6 million that Staff
25 concedes are eligible, that are ISRS-eligible

1 expenses, they're just above the cap, so you can --
2 you do concede that they are eligible for the ISRS
3 recovery?

4 MS. MAYFIELD: Yes, based on Staff's
5 review of what Missouri-American submitted, that is
6 a correct assumption.

7 CHAIR KENNEY: And if we don't allow
8 Missouri-American to book that in a regulatory
9 asset, that's just money they'll never recover?

10 MS. MAYFIELD: I mean Mark Oligschlaeger
11 may be better suited to answer that, as he is an
12 accountant. I'm just not in a position to answer
13 that.

14 CHAIR KENNEY: And if it's -- if it's
15 booked in a regulatory asset for recover -- because
16 Staff's position is that the ISRS is an ISRS, so we
17 can't establish a second ISRS by allowing recovery
18 of this 1.6. That's ultimately what Staff's
19 characterizing it as; right?

20 MS. MAYFIELD: Yes, in my opening that
21 is the way I've described it. And it's not Staff's
22 characterization. Again, it's our reading of the
23 Western District opinion.

24 CHAIR KENNEY: But if we're just
25 allowing it for recovery in future rates, it's

1 not -- not going to be delineated on a customer
2 bill as an ISRS item; it's just ISRS-eligible costs
3 being rolled into base rates in the next case.

4 MS. MAYFIELD: I understand what you're
5 saying. I believe that to be a correct statement.

6 CHAIR KENNEY: But you're saying the
7 Laclede Gas case, the Western District case,
8 prohibits that?

9 MS. MAYFIELD: I'm not saying that it
10 directly prohibits exactly the situation that you
11 have just articulated. What I'm saying is that in
12 the reading of the Western District Court of
13 Appeals case, it found that there aren't multiple
14 ISRSs occurring at the same time. And so that
15 anything that you were to put into an ISRS,
16 including reconciliation amount, goes into that
17 single ISRS.

18 CHAIR KENNEY: Okay. Thank you.

19 MS. MAYFIELD: You're welcome.

20 JUDGE JORDAN: Commissioner Hall.

21 COMMISSIONER HALL: Good morning.

22 MS. MAYFIELD: Morning.

23 COMMISSIONER HALL: If I could direct
24 your attention to Commission Rule 4 CSR
25 240-3.650(17), that is a -- I'm going to start out

1 by asking you the same question I asked Ms. Baker.
2 What do you believe the purpose of this rule is?

3 MS. MAYFIELD: I mean, as I read it,
4 because -- and I highlighted it, I do believe that
5 it permits this Commission to track those over or
6 under collections.

7 COMMISSIONER HALL: And do what with
8 them?

9 MS. MAYFIELD: To monitor what those
10 amounts are so that in the next general rate
11 proceeding those over or under collections can be
12 accounted for in however fashion that would be
13 accounted for.

14 COMMISSIONER HALL: Okay. So here's my
15 question: Over or under recovery, is that over or
16 under recovery comparing ISRS revenues and
17 authorization or is that also comparing over and
18 under recovery with the cap?

19 MS. MAYFIELD: Our interpretation of the
20 statute is the cap is associated with what this
21 Commission authorized and can authorize. So this
22 Commission can authorize up to \$25,892,662. That
23 is the amount that this Commission can authorize.
24 Now, what Missouri-American actually collects, I
25 don't necessarily know if the statute speaks to

1 that. That's why I referred to the Missouri -- or
2 to the Ameren fuel adjustment charge with some
3 variation there, which was directly impacted on
4 usage. Does that answer your question?

5 COMMISSIONER HALL: Kind of. Let me ask
6 you this: The 10 percent cap, you believe -- it's
7 Staff's position that that is a cap on what we can
8 authorize, that is a cap on what can be recovered,
9 or both?

10 MS. MAYFIELD: I believe Staff's
11 position is that it is what this Commission can
12 authorize. And that's what I've reiterated in my
13 opening, as I described it. This Commission can
14 authorize up to 10 percent of the water
15 corporation's base revenue level approved by the
16 Commission.

17 But we do have a Staff witness here who
18 is an accountant. And if for some reason
19 authorized versus collected is one of those words
20 that may have particular significance in
21 accounting, I'm sure Mark would be able to answer
22 that question for you as well.

23 COMMISSIONER HALL: Okay. Thank you.

24 MS. MAYFIELD: You're very welcome.

25 JUDGE JORDAN: I have no questions from

1 the other commissioners. Thank you.

2 MS. MAYFIELD: Thank you, Judge Jordan.

3 JUDGE JORDAN: We're ready for
4 Applicants to begin their case in chief.

5 MR. COOPER: We would call Ms. Jeanne
6 Tinsley.

7 Your Honor, may we mark Ms. Tinsley's
8 direct and rebuttal testimonies as Exhibits 1 and 2
9 for identification or do you have a different...

10 JUDGE JORDAN: No, that's fine. 1 will
11 be the direct, and number 2 will be the rebuttal.

12 Ms. Tinsley, please raise your right
13 hand.

14 JEANNE TINSLEY,
15 after having been first duly sworn, was
16 examined and testified on her oath as follows:

17 JUDGE JORDAN: Thank you.

18 DIRECT EXAMINATION BY MR. COOPER:

19 Q Please state your name.

20 A Jeanne Tinsley.

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

23 A I'm employed by American Water Service
24 Company as the rates and regulation manager for
25 Missouri-American and Iowa-American.

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

4 A I have.

5 **Q Is it your understanding that that**
6 **testimony has been marked as Exhibits 1 and 2 for**
7 **identification?**

8 A Yes.

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

11 A Yes, I do have one change. The rebuttal
12 testimony, pages 1 through 4, the header should
13 read "rebuttal" instead of "direct."

14 **Q Is that the only change?**

15 A That is.

16 **Q If I were to ask you the questions that**
17 **are contained in Exhibits 1 and 2 today, would your**
18 **answers be the same?**

19 A They would.

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

23 A They are.

24 MR. COOPER: Your Honor, I would offer
25 Exhibits 1 and 2 into evidence and tender

IN THE MATTER OF MAWC

1 Ms. Tinsley for questions.

2 JUDGE JORDAN: Very good. Objections to
3 those exhibits?

4 MS. MAYFIELD: None, Your Honor.

5 JUDGE JORDAN: Very good. Then those
6 exhibits are admitted into the record.

7 (Exhibits 1 and 2 received.)

8 JUDGE JORDAN: The sequence of
9 cross-examination that I have shows
10 cross-examination first from the Office of Public
11 Counsel.

12 MS. BAKER: No questions.

13 JUDGE JORDAN: Cross-examination from
14 Staff?

15 MS. MAYFIELD: No questions.

16 JUDGE JORDAN: Questions from the bench?

17 Mr. Chairman.

18 CHAIR KENNEY: I have no questions.

19 Thank you.

20 JUDGE JORDAN: Commissioner Hall.

21 COMMISSIONER HALL: Yes.

22 EXAMINATION BY COMMISSIONER HALL:

23 Q Good morning.

24 A Good morning.

25 Q If the Commission were to take Staff's

1 **and OPC's position in this -- in this case and deny**
2 **recovery through the ISRS of the 1.6 million, would**
3 **Missouri-American be able to recover those expenses**
4 **via another avenue?**

5 A They would not, not until we file
6 another rate case. But the rates set in rate case
7 are proactive versus -- so we would lose the
8 revenue.

9 Q **Wouldn't you be able to get depreciation**
10 **on that 1.6 million going forward?**

11 A Once we file a rate case.

12 Q **Which -- which is imminent? I mean, you**
13 **filed notice, so...**

14 A Correct. But it takes 11 months to have
15 rates set.

16 Q **So -- so in the next rate case when the**
17 **Commission sets the value of your -- of rate base,**
18 **it would take into account that 1.6 million?**

19 A It would.

20 Q **And the Company would receive**
21 **depreciation 10, 15, 20 year, whatever time period**
22 **on that 1.6 million. So you would recover it over**
23 **10, 15, 20 years; you just wouldn't recover it in**
24 **the expedited manner envisioned by ISRS?**

25 A Just going forward. We wouldn't recover

1 the depreciation expense from the time it went into
2 service until the application of new rates.

3 **Q Is there any back-of-the-envelope guess**
4 **as to how much that would be, how much you would**
5 **lose? And if you can't do that, that's fine.**

6 A Yeah, I don't know at this time.

7 **Q All right. It's my understanding that**
8 **Staff's position is that if the Commission were to**
9 **adopt Missouri-American's interpretation of the**
10 **ISRS statute that Missouri-American would recover**
11 **over the 10 percent cap. Is that your**
12 **understanding as well?**

13 A No, I disagree.

14 **Q Well, I don't -- I'm not saying -- I'm**
15 **not asking whether you agree or disagree with that**
16 **position. But my question is is that your**
17 **understanding that that's Staff's position?**

18 A Yes, I do agree.

19 **Q Okay. And that Staff believes that the**
20 **Company would over recover by 1.6 million?**

21 A That's their belief.

22 **Q Okay. Why is that wrong?**

23 A That is wrong because the rates that we
24 are basing our revenue requirement on are
25 calculated from the usage that was determined in

1 our last rate case, which was back from 2010 data,
2 and our usage since then has declined. So if we
3 had set rates based on current usage levels, we
4 wouldn't have an under collection; and, therefore,
5 we'd be able to recover that 1.6 million.

6 **Q So, in essence, you believe that because**
7 **of prior decline in consumption and future decline**
8 **in consumption that we can authorize the amount**
9 **that you request here today and you will hit the**
10 **\$25.9 million cap?**

11 A Correct, because we have not collected
12 that amount.

13 **Q But you're -- you're anticipating future**
14 **decline in consumption? I mean, that's part and**
15 **parcel --**

16 A That has been our trend, yes.

17 **Q So looking at page 6 of your -- of your**
18 **direct testimony and the hypothetical, you believe**
19 **that it would be appropriate for the Commission to**
20 **authorize 3.2 million with the belief,**
21 **understanding, assumption that the actual receipts**
22 **would be 3 million?**

23 A The Commission would authorize 3 million
24 of recovery of investment. The 210,000 is the
25 reconciliation to allow us to collect what we

1 haven't already collected that was previously
2 authorized.

3 **Q But in your hypothetical what is the**
4 **authorized amount --**

5 A Three --

6 **Q -- after -- after June 1, 2015?**

7 A 3 million 210.

8 **Q Okay. So -- so you believe that the**
9 **10 percent cap does not apply to what is**
10 **authorized; you believe that the 10 percent cap**
11 **only applies to actual receipts?**

12 A What is collected, correct.

13 **Q How much has been actually recovered**
14 **under the ISRS since its inception?**

15 A That I'm not -- I don't have that --

16 **Q But isn't that -- that's the thing that**
17 **confused me from the get-go in this whole case,**
18 **because it seems to me, I mean, reading all the**
19 **testimony, reading all the briefs, that the**
20 **fundamental question is what is the actual**
21 **recovery.**

22 A Well, through the true-up period of two
23 thousand -- from 2012 to September of 2014,
24 we've -- we haven't recovered 1.6 million of the
25 authorized amount.

1 **Q Right. But why can't -- if everybody**
2 **agrees as to what the cap is, \$25.8 million, why is**
3 **this case not as simple as simply figuring out**
4 **exactly what has been recovered and subtracting**
5 **that from the twenty-five eight and -- and putting**
6 **that as the additional ISRS?**

7 A Well, like I said, we -- we do know
8 through September of 2014 the difference between
9 what was authorized and what was collected, and
10 that is \$1.6 million. So that is the amount that
11 we believe should -- we should be able to --

12 **Q Okay. So --**

13 A -- invest.

14 **Q So as of September 2014, actual recovery**
15 **would be what?**

16 A 23,972,670.

17 **Q Okay. And -- and you don't have**
18 **current -- I mean, it obviously changes every**
19 **month.**

20 A Correct.

21 **Q But you don't have the current amount?**
22 **That's -- that's the most current number you have?**

23 A That's the most current. That's the
24 last reconciliation we've completed.

25 **Q If the -- if the Commission were to**

1 adopt Missouri-American's statutory interpretation
2 of the ISRS statute and -- but Staff turned out to
3 be correct that that resulted in an over recovery,
4 meaning over 10 percent recovery, do you think that
5 the -- the Commission would be able to put a
6 tracker on those dollars and account for that over
7 recovery in the next rate case?

8 A Yes, as a regulatory liability.

9 Q Okay. A couple of remedial questions,
10 if you'll -- if you'll bear with me.

11 A Sure.

12 Q The -- the \$25.8 million cap, that's not
13 an annual cap, that is a three-year cap; is that
14 correct?

15 A Correct.

16 Q Okay. And the ISRS surcharge put in
17 place when -- when the ISRS was initially
18 established, was that designed to recover the
19 expenses for qualifying expenditures over one year?

20 A It was about a six-month period.

21 Q So it was designed to recover that
22 amount over six months?

23 A Yes.

24 Q And is that -- is that mandated by
25 the -- by the statute or the rule that -- a

1 **six-month time period for recovery?**

2 A We're allowed to file an ISRS twice in
3 any one-year period.

4 **Q Right. So you -- do you believe that on**
5 **the basis of that, the rates are to be designed --**
6 **the surcharge is to be designed to recover that**
7 **expense over six months?**

8 A Not over six months.

9 **Q Over a year?**

10 A Over a year.

11 COMMISSIONER HALL: Okay. All right. I
12 have no further questions. Thank you.

13 JUDGE JORDAN: I have no questions from
14 the other commissioners. So does that -- does this
15 questioning generate any recross from OPC?

16 MS. BAKER: No.

17 JUDGE JORDAN: Any recross from Staff?

18 MS. MAYFIELD: No, Your Honor.

19 JUDGE JORDAN: Any redirect by
20 Missouri -American?

21 MR. COOPER: A little bit, Your Honor.

22 REDIRECT EXAMINATION BY MR. COOPER:

23 **Q In response to some early -- well, let**
24 **me ask this. Commissioner Hall was asking you**
25 **about whether the Company would sort of lose**

1 recovery of the 1.6 million if Staff's position
2 were deemed to be the appropriate one. Do you
3 remember that?

4 A Yes.

5 Q And part of that discussion you started
6 talking about depreciation expense and some other
7 things associated with this plan. Let me ask you
8 this: Is the eligible ISRS plan that we're talking
9 about in this case, is it in service today?

10 A It is.

11 Q And do you start to book depreciation
12 associated with that -- when do you start to book
13 depreciation associated with that plan?

14 A The month after it goes into service.

15 Q Okay. So as to that plan, you are
16 currently booking depreciation expense; correct?

17 A We are.

18 Q And in your next rate case, presumably
19 depreciation expense for that plant will be taken
20 into account; correct?

21 A Correct.

22 Q But I think you were going this
23 direction: Those rates will be set to pick up past
24 periods or for prospective periods?

25 A Prospective periods.

1 Q So the depreciation expense that you've
2 already experienced is gone; is that correct?

3 A Correct.

4 Q And that's -- when you talk about you'll
5 not get recovery, is the recovery of those --
6 there's also property taxes, there's some other
7 things associated with that plan; correct?

8 A Correct.

9 Q And that won't be provided for -- unless
10 you have some sort of deferral, that won't be
11 provided for in your future rates?

12 A That's correct.

13 Q Just to kind of clear something up, and
14 I think you may have in one of your later answers.
15 But at first I heard you say that an ISRS was
16 designed to recover moneys over a six-month period,
17 and that threw me a little bit. Did you later --
18 what period -- when you do the rate design, are you
19 contemplating a six-month period or a year period?

20 A An annual. An annual period.

21 Q Okay. And if you know -- I think there
22 was also a question about the cap. Is there a
23 reference to annual -- annual periods in statute in
24 regard to the cap or do you know?

25 A Not for an annual period, no.

1 MR. COOPER: Well, let me -- may I
2 approach the witness, Your Honor?

3 JUDGE JORDAN: To clarify, no one need
4 ask my permission to approach the witness, any
5 witness.

6 MR. COOPER: What I've handed the
7 witness is the statute/rule provisions referenced
8 in my opening statement that I provided earlier.

9 BY MR. COOPER:

10 Q On the first page there's Section
11 393.1003(1). Do you see that?

12 A I do.

13 Q And in that statute, one, two, three,
14 four, five, six, seven, eight lines down, on the
15 very end of that eighth line, do you see that it
16 talks about on an annualized basis?

17 A Yes.

18 MR. COOPER: Okay. Thank you. That's
19 all I have, Your Honor.

20 JUDGE JORDAN: You may stand down.

21 COMMISSIONER HALL: I have one more
22 question. I'm sorry.

23 JUDGE JORDAN: It's not too late for
24 Commissioner Hall.

25 FURTHER EXAMINATION BY COMMISSIONER HALL:

1 **Q So on an annualized basis in the**
2 **statute, what does that mean, or how do you**
3 **interpret that?**

4 A I guess I'm not following your question.

5 **Q Well, if it's -- if it's a three-year**
6 **cap, I mean -- and this is actually the provision**
7 **that causes me some -- some confusion. If the cap**
8 **is three years but the limitation is 10 percent on**
9 **an annualized basis, what does on an annualized**
10 **basis mean?**

11 A I believe it's not 10 percent on an
12 annualized basis; it's 10 percent when you get to
13 the final three years. So in the first year we're
14 only -- we're not issuing the full amount. It's
15 only, you know, maybe 8 million. So it -- it
16 continues. We don't reach the cap until maybe
17 three years out.

18 MR. COOPER: Your Honor and
19 Commissioner, would it be possible to take maybe a
20 five-minute break so that I can talk to Staff for a
21 moment? I'd like to think that maybe this wouldn't
22 be as confusing if I could have just a minute to
23 talk to Staff and OPC on the matter.

24 JUDGE JORDAN: Any problem with that?

25 COMMISSIONER HALL: None.

1 JUDGE JORDAN: Five minutes. We will be
2 in recess.

3 (Off the record.)

4 JUDGE JORDAN: And we are back on the
5 record. Commissioner Hall was questioning the
6 witness.

7 MR. COOPER: If it would -- if it would
8 be possible, the discussion that was had amongst
9 Staff, OPC, and the Company concerned the questions
10 about the cap and whether it's an annual cap. And
11 to the extent it makes any difference to the
12 Commission, the parties, I believe -- and they
13 certainly can jump in and correct me if I'm
14 wrong -- it's the belief of all three parties that
15 the cap is really an annual cap. When we talk
16 about \$25 million, that's an annual amount.

17 So, for example -- the extreme example
18 that was provided in our discussion is is that if a
19 company were able to ramp up its installation of
20 ISRS-eligible plant such that it drove an ISRS rate
21 in year one equal to its cap, \$25 million for
22 example, it potentially could recover that 25
23 million in year one, year two, year three, which
24 would ultimately be a total of 75 million in my
25 example. It couldn't add any more ISRS-eligible

IN THE MATTER OF MAWC

1 plant after the first year, but -- but it's our
2 belief -- and I'll turn it over to Staff and OPC
3 from there -- that that is an annual cap number
4 that we're comparing to.

5 JUDGE JORDAN: Staff? OPC?

6 MS. MAYFIELD: Staff agrees with
7 Mr. Cooper's description of the cap.

8 MS. BAKER: Public Counsel also.

9 COMMISSIONER HALL: Thank you.

10 JUDGE JORDAN: No more questions,
11 Commissioner Hall?

12 COMMISSIONER HALL: Well, actually, let
13 me get clarification. I don't know if I should
14 direct this to you, Mr. Cooper, or to Ms. Tinsley.

15 So I think what you said is that the 25
16 million is an annual cap. So it would -- it's
17 conceivable that Missouri-American could recover
18 \$25 million a year for three years, \$75 million?

19 MR. COOPER: If we assume they were able
20 to put in enough plant to drive that.

21 COMMISSIONER HALL: And so would that
22 \$75 million in plant -- could -- in January of each
23 of the three years, could they put \$25 million in
24 new plant and equipment in?

25 MR. COOPER: No.

IN THE MATTER OF MAWC

1 COMMISSIONER HALL: Okay.

2 MR. COOPER: Once -- once they had --
3 and that's my assumption, I guess in my
4 hypothetical, is that in year one they've installed
5 and have in service enough plant to drive an ISRS
6 rate in a total amount of 25 million. So I think,
7 you know, once they reach that number in year one,
8 they certainly couldn't add any more in years two
9 and three.

10 COMMISSIONER HALL: They couldn't add
11 any more plant and equipment?

12 MR. COOPER: Right. Now, we would
13 differ with Staff as to what to do if actual
14 recoveries were greater or lesser than the 25
15 million. But -- but that's kind of where we lead
16 in this case, I guess.

17 JUDGE JORDAN: Okay. Let me ask the
18 stupid question here, because this sounds -- this
19 is to be a different perspective than how I read
20 the prefiled testimony. So we have a cap that
21 everyone agrees is the \$25 million number,
22 apparently. The parties read the statutes to say
23 that \$25 million is the most that can be
24 collected -- the most -- no, I'll use the language
25 of the statute. An ISRS on an annualized basis

1 must produce ISRS revenues not in excess of
2 \$25 million.

3 Now, when we say that's annualized, that
4 means you can get \$25 million in a year. You can
5 produce not in excess of \$25 million a year. You
6 generate that much revenue. 59 15.

7 You produce that much revenue. What
8 about the three-year life of the ISRS, can the --
9 can Missouri -American collect more than
10 \$25 million?

11 MR. COOPER: Over the three-year life?

12 JUDGE JORDAN: Yes.

13 MR. COOPER: Yes, we believe so.

14 JUDGE JORDAN: So \$25 million is
15 actually \$25 million each year of the life of the
16 ISRS, not all years of the life of the ISRS; is
17 that correct?

18 MR. COOPER: Say that again. I'm sorry,
19 Your Honor.

20 JUDGE JORDAN: \$25 million is what we
21 produce by ISRS. That's the ISRS revenue we
22 generate. We generate that in year one, then again
23 in year two, and then again in year three of the
24 ISRS; is that correct?

25 MR. COOPER: In our hypothetical, which

1 assumes that we -- rate design has hit it spot on
2 and we've actually collected what we thought we
3 were going to collect and all those assumptions.
4 But, yes.

5 JUDGE JORDAN: Okay. Then does Staff
6 agree?

7 MS. MAYFIELD: Yes, Your Honor.

8 JUDGE JORDAN: And does OPC agree?

9 MS. BAKER: Yes, I believe so.

10 JUDGE JORDAN: I will ask Commissioner
11 Hall's question in another form then. For the --
12 for the current year that we're in, what's the best
13 descriptor of that, of this period that we're
14 talking about? I'll ask that of the witness.

15 EXAMINATION BY JUDGE JORDAN:

16 **Q How do you describe this period that**
17 **we're talking about collecting the ISRS that's --**
18 **surcharge that's at issue here?**

19 A The surcharge, the 1.9 we're requesting?

20 **Q Yes. I understand that your ISRS runs**
21 **out in September; is that correct?**

22 A That's correct.

23 **Q Okay. How do we describe the period**
24 **ending in September?**

25 A In September if --

1 **Q Do we call that a fiscal year? Do we**
2 **call that an ISRS period?**

3 A Yeah, an ISRS reconciliation period.
4 Our first ISRS went into effect in September, on
5 September 25th, 2012. So every September we do a
6 reconciliation.

7 **Q So September ends this reconciliation**
8 **period?**

9 A That's correct.

10 **Q Okay. So my question is -- and I'll**
11 **direct it to you also -- in the year ending, the**
12 **fiscal -- say this again. In the ISRS period**
13 **ending September of 2015, Missouri-American --**
14 **Missouri-American's ISRS surcharge must generate no**
15 **more than -- no more than a 25 -- the \$25 million**
16 **amount?**

17 A That's correct.

18 **Q Okay. Not less than a million dollars,**
19 **but it must generate no more than that?**

20 A Correct.

21 **Q Okay. Do you have a handle on how much**
22 **ISRS -- ISRS revenue the surcharge has generated so**
23 **far in this period ending September 2015?**

24 A I do not have the exact revenue amounts.
25 I do know that our usage has -- is still lower than

1 what was authorized in our last case.

2 Q Okay. Do you have an amount of revenue
3 generated for any period?

4 A Just for the periods that we've already
5 reconciled.

6 Q Okay. And that would mean up to
7 September of 2014?

8 A Correct.

9 Q Ending September of 2014. And what is
10 that amount, please?

11 A 23,972,670.

12 Q Okay. That number's familiar to me. I
13 know I've seen it in your testimony.

14 Now, I'll also ask Commissioner Hall's
15 question again in this simplified and simpleminded
16 way. If the issue is how much revenue ISRSs
17 generate, don't we take that number -- that cap
18 I'll say, and subtract the number that you just
19 gave for me? Is that what you're telling the
20 Commission to do?

21 A The 25 minus the 23?

22 Q Um-hum.

23 A Yes, I believe so.

24 JUDGE JORDAN: Okay. Thank you.

25 Commissioner Hall, did you have any more

1 questions?

2 COMMISSIONER HALL: Yeah, I do.

3 FURTHER EXAMINATION BY COMMISSIONER HALL:

4 Q So what was -- what is the total amount
5 of ISRS-eligible expenditures that the Company has
6 had since the inception of the ISRS in this case?

7 A That is the 23 million 972. That's how
8 much we've --

9 Q Total over three years?

10 A Yes.

11 Q Okay. Well, then I am still confused as
12 to how we -- if we have a \$25 million cap a year,
13 how we have a total of \$23 million in expenditures
14 over three. So, I mean...

15 A Well, if you look at the chart on page 7
16 of my direct testimony, the -- if you look at the
17 last column, it says the amount associated with new
18 ISRS plant, that's the revenue that we were
19 authorized that was based on new ISRS investment.
20 So in September it was only 3.7 million, in June it
21 was 5.8, because we have never invested enough in
22 one year to get to the 25 million. That would
23 almost be impossible. So the first year our ISRS
24 was in place, it was about 9 million only. So in
25 that first year we were only authorized to collect

1 9 million.

2 **Q Where does that 9 million appear?**

3 A I'm just adding the first two numbers,
4 the first two ISRS in our first 12-month period.

5 **Q So you -- that's a result of two -- two**
6 **different orders; right?**

7 A Correct.

8 **Q The first one authorized roughly 4**
9 **million?**

10 A Correct.

11 **Q And that was for \$4 million worth of**
12 **plant and equipment up and running, used and**
13 **useful?**

14 A The 3.7, yes. There was also a \$253,000
15 adjustment for under recovery included in the
16 amount. But the amount associated with plant was
17 only 3.7 million.

18 COMMISSIONER HALL: Okay. All right.
19 Thank you.

20 JUDGE JORDAN: Mr. Chairman, do you have
21 any further questions?

22 CHAIR KENNEY: I'm confused again,
23 because it looks like -- I don't have a question.
24 Maybe just a comment.

25 EXAMINATION BY CHAIRMAN KENNEY:

1 **Q You guys are saying \$25 million cap**
2 **annually. But reading this chart it seems like**
3 **you're saying it's 25 million over a three-year**
4 **period. And that's -- so I'm confused.**

5 A Well, the way to explain it is we have
6 the \$25 million cap.

7 **Q Total?**

8 A Total.

9 **Q Over the entire life of the ISRS?**

10 A Any year.

11 **Q In any given year?**

12 A In any given year 25 million. So in the
13 first year we only were authorized 9 million,
14 say --

15 **Q Okay.**

16 A -- so we were clearly way under the cap.

17 **Q And that's for the W0-2012-0401 and**
18 **W0-2013-0466?**

19 A Correct.

20 **Q And you add those two together, so**
21 **\$9 million. You were well under 25 million?**

22 A Well under 25 million. So that means we
23 can continue to invest and ask for recovery.

24 **Q Okay.**

25 A The second two we requested another 2.9

1 and 4.1. We were still clearly under the
2 \$25 million cap.

3 **Q And then now?**

4 A Now we're getting in this next -- in
5 this current filing, we're asking for 1.9, which
6 includes 1.6 million of under recovery from all
7 those prior ISRSs that we didn't collect.

8 JUDGE JORDAN: Okay. If I may return to
9 my simpl eminded questions. Why are we talking
10 about a one-year period and a three-year period?
11 First you started talking about one-year periods
12 with the \$25 million cap. Now you're adding
13 previous periods -- the previous three years and
14 looking at a \$25 million cap.

15 THE WITNESS: Yeah, we have three years
16 to get to the \$25 million cap. We're never going
17 to get to 25 million in the first year. So the cap
18 is in total of all ISRSs between the two rate
19 case -- between rate cases.

20 COMMISSIONER HALL: So that would --
21 that's a three-year cap.

22 CHAIR KENNEY: So it's a three-year cap,
23 not an annual.

24 JUDGE JORDAN: It's both. And --

25 THE WITNESS: Well, it's looked at

1 annual -- it's looked at at each ISRS filing to
2 make sure we're not over the cap. But...

3 JUDGE JORDAN: It's both. You're saying
4 that over the life of three years you cannot
5 collect more than 25 million, but you could collect
6 that in one year?

7 THE WITNESS: We could.

8 JUDGE JORDAN: And then there would be
9 no more?

10 THE WITNESS: And then we'd have to
11 stop, right.

12 CHAIRMAN KENNEY: Mr. Cooper said you
13 could collect 75 million theoretically. He said
14 that -- he said there was a hypothetical situation
15 under which you could theoretically collect \$75
16 million.

17 THE WITNESS: Correct. And if we did
18 reach that 25 million in the first year, which is
19 very highly unlikely, then we could still continue
20 to collect that 25 million each year. Those rates
21 would stay in effect until we file our next rate
22 case.

23 CHAIR KENNEY: This seems mathematically
24 contradictory. It's either 25 million over the
25 life of the ISRS from rate case to rate case, but

1 then you're also saying it conceivably could be
2 \$25 million annually for a grand total of 75
3 million under Mr. Cooper's hypothetical.

4 THE WITNESS: That's a --

5 CHAIRMAN KENNEY: I'm confused.

6 THE WITNESS: Yeah, that hypothetical
7 would never really happen. We'd have to collect
8 all of it in the first year and then wait three
9 years to file a rate case.

10 CHAIRMAN KENNEY: Collect all...

11 THE WITNESS: To be able to collect 75
12 million. We'd have -- we'd have to have 25 million
13 filing in our first year and then collect -- and
14 then that would stay in rates. So that means 25
15 million each year until we file a rate case.

16 JUDGE JORDAN: Counselor, did you have
17 something?

18 MR. COOPER: Well, yeah, and I think
19 Staff counsel does as well. I'm not sure where
20 we're kind of getting off track, but I think it's
21 this: I think that there is investment in the
22 plant to start with; and when we start talking
23 about what's going to be in the ISRS rate, we're
24 really talking about the costs associated with that
25 investment. So, for example, on page 7 of

1 Ms. Tinsley's testimony there, we were looking at
2 that chart, and in the far-right column she's got
3 the 3.736,587 in the -- as the amount associated
4 with new ISRS plant for that 0401 case. That --
5 that's the costs associated with the plant
6 investment. So there's more -- more investment
7 than that, right, that drives those costs.

8 Those costs -- that investment will
9 exist in year two, in year three, and in year four,
10 and that 3.736 is the annual cost associated with
11 that investment. So that 3.7 continues in year
12 two -- to be recovered in year two, in year three,
13 and so on. That investment doesn't go away. The
14 cost associated doesn't go away.

15 COMMISSIONER HALL: So the surcharge
16 continues?

17 MR. COOPER: So the surcharge -- yeah,
18 it's a part of the surcharge that's being --

19 COMMISSIONER HALL: Even though -- even
20 though the surcharge in that year brought in the
21 amount equal to the investment --

22 MR. COOPER: Correct.

23 COMMISSIONER HALL: -- the surcharge
24 continues?

25 MR. COOPER: Because it's designed on a

1 yearly basis. So it's designed to recover the 3.7
2 each year until ultimately we go back to -- to zero
3 in the next rate.

4 COMMISSIONER HALL: Even though the --
5 your out of pocket was \$3.7 million, you're going
6 to get \$3.7 million that first year, that second
7 year, and that third year?

8 MR. COOPER: Because it -- that 3.7
9 consists of the depreciation expense that has to be
10 recorded on an annual amount, the property taxes
11 that have to be paid every year, the return on the
12 investment for every year. So that -- those --
13 those items are going to be incurred or paid or
14 whatever every year until you get to a rate case
15 and that plant is rolled into the rate base on a
16 going-forward basis.

17 So -- so when we look at this, this
18 chart, I mean, we start with 3.7. Then there's
19 additional plant investment that drives the 5.8.
20 That's new investment different --

21 CHAIR KENNEY: That's incremental.
22 That's not -- that's a whole -- that's an
23 incremental amount.

24 MR. COOPER: It is. Correct, Chairman.
25 And I'll turn it over to Staff, because

IN THE MATTER OF MAWC

1 I think they wanted to jump in on that.

2 CHAIR KENNEY: That's an incremental
3 annualized amount for different investment than is
4 reflected in the 3.7 million?

5 MR. COOPER: Yes.

6 MS. MAYFIELD: Correct.

7 CHAIR KENNEY: Okay. Fair enough.

8 MS. MAYFIELD: I don't want --

9 CHAIR KENNEY: I'm starting to get it
10 now.

11 MS. MAYFIELD: Yeah, I don't know if
12 Staff has much more to answer than what Mr. Cooper
13 clarified, except I think he hit the issue that
14 Commissioner Hall and that Judge Jordan and
15 yourself, Chairman, were driving at, what is the
16 ISRS comprised of. And he explained that it's
17 depreciation, property tax, as well as the return
18 on the investment. So I think understanding what
19 comprises the ISRS helps to explain how that
20 annualized amount is figured up.

21 CHAIR KENNEY: So if you -- okay. So to
22 go back to your hypothetical. If you had
23 \$25 million of new investment in year one --

24 MR. COOPER: Yeah, I probably --

25 CHAIR KENNEY: -- you would collect that

IN THE MATTER OF MAWC

1 25 million annually, but you wouldn't have any
2 additional incremental plant that you could add on
3 to that? So --

4 MR. COOPER: Correct.

5 CHAIR KENNEY: -- in this 9 -- 2512 --
6 WO-2012-0472.

7 01 had you set the ISRS amount at 25
8 million that year, the rest of these cases never
9 would have happened, and this would have been an
10 annual collection of 25 million, 729.

11 Arriving at your grand total of 75
12 million.

13 MR. COOPER: Right.

14 CHAIR KENNEY: I got it.

15 MR. COOPER: And there would have been a
16 reconciliation on a yearly --

17 CHAIR KENNEY: Okay.

18 MR. COOPER: -- basis. But, yeah.

19 CHAIR KENNEY: But you -- so the cap
20 prevents the addition of any new plant, if you were
21 to get to the 25 million in that first year?

22 MR. COOPER: Correct.

23 CHAIR KENNEY: All right. I think I
24 understand. I think I got it now.

25 COMMISSIONER HALL: And so --

IN THE MATTER OF MAWC

1 CHAIR KENNEY: Thank you.

2 THE WITNESS: I do have the total
3 investment amount.

4 COMMISSIONER HALL: So for \$25 million
5 of investment in that first year, you're going to
6 recover \$75 million over the three years?

7 MR. COOPER: Yeah. And --

8 COMMISSIONER HALL: And that would
9 include \$25 million of out of costs -- or
10 out-of-pocket expenditure to build, to buy the
11 plant and equipment, and then 50 million for
12 depreciation and property taxes?

13 CHAIR KENNEY: No, the whole investment
14 is 75 million, but you've annualized it over
15 twenty -- over three years.

16 MR. COOPER: And investment is probably
17 a little --

18 CHAIR KENNEY: More than.

19 MR. COOPER: -- not really what we want
20 to call that. Because the 25 million is really the
21 revenue requirement or the costs associated with
22 the plant investment. The plant investment would
23 have to be much greater than 25 million to drive 25
24 million in ISRS costs.

25 But, yes, in that example, if it were

1 possible to invest all that in the first year, get
2 to the cap in the first year such that your ISRS
3 costs could be recovered with the 25 million, and
4 that's going to happen year after year after year
5 because those costs are annual costs. And over the
6 life of it -- that's why we say in that example if
7 you hit it perfect and you didn't have any
8 reconciliation, you could potentially recover 75
9 million in ISRS revenue at the end of the third
10 year. Of course, in reality, they're not that nice
11 and neat, because you come in in partial years
12 and...

13 CHAIR KENNEY: 25 million doesn't
14 reflect the sum total of the investment. It's an
15 annualized recovery of that investment. So it's
16 necessarily greater than 25 million.

17 MR. COOPER: Absolutely.

18 CHAIR KENNEY: Yes.

19 MR. COOPER: Yes.

20 COMMISSIONER HALL: And so the --
21 whatever -- whatever volumetric rate was put
22 into -- put into effect in your hypothetical, that
23 would -- that brought in \$25 million in the -- in
24 the first year, is -- would that -- that rate would
25 continue, absent any action by the Commission the

IN THE MATTER OF MAWC

1 next two years or --

2 MR. COOPER: Yes.

3 COMMISSIONER HALL: -- or --

4 MR. COOPER: Yes. Yes. You would come
5 in annually for your reconciliation; but provided
6 you were hitting it spot on, I assume that that
7 rate would just continue. You wouldn't -- on the
8 same tariff sheet.

9 COMMISSIONER HALL: Okay. Thank you.

10 JUDGE JORDAN: Any further questions
11 from the bench?

12 Mr. Chairman.

13 CHAIR KENNEY: Maybe. So just -- sorry.
14 Just going through each of these, so the
15 3.7 million, the ISRS charge is reset in the 0406
16 to collect an incremental additional 5.8 million;
17 and then again in the 0055, it's reset again to
18 collect an incremental 2.9 million, all the way
19 down; right?

20 THE WITNESS: Correct.

21 CHAIR KENNEY: Okay.

22 MR. COOPER: Yes, it would be. We've
23 got some reconciliation amounts in there that would
24 affect it as well. But, generally, yes.

25 CHAIR KENNEY: So the 1.9 million

IN THE MATTER OF MAWC

1 reflects 1.6 million in prior periods under
2 recovery. Why wasn't that 1.6 reflected in the
3 adjustments to the prior ISRSs?

4 MR. COOPER: Yeah, and I wouldn't
5 categorize or characterize it in that fashion. 1.9
6 are costs associated with new --

7 CHAIR KENNEY: With new investment.

8 MR. COOPER: -- eligible ISRS projects.
9 The 1.6 was -- from the Company's perspective was a
10 reconciliation amount that's already built into the
11 existing -- the existing rate.

12 CHAIR KENNEY: So this is not a
13 characterization of whether you should be allowed
14 under recovery -- to collect the under recovery
15 then, it's a characterization of -- you're saying
16 the 1.9 reflects new investment?

17 MR. COOPER: It does, yes.

18 CHAIR KENNEY: Staff is saying though
19 that that 1.9 -- that 1.6 million of it is under
20 recovered from prior periods; is that right? Okay.

21 MR. COOPER: I -- I'll let Staff -- I'd
22 be happy to answer for Staff.

23 JUDGE JORDAN: And I'll remind everyone
24 to use the microphone. Make sure it's turned on.

25 CHAIR KENNEY: So the 1.9 million is new

1 investment?

2 MR. OLIGSCHLAEGER: Yes.

3 CHAIR KENNEY: All right.

4 JUDGE JORDAN: Okay. A little bit of
5 that came from people who are not under oath. Some
6 of it is argument from Counsel, and there was one
7 nod in agreement, and I think a verbalization from
8 Staff's witness; is that correct? And I'm asking
9 Counsel.

10 MS. MAYFIELD: Yes, Your Honor, that's
11 correct. And I'm certain Mr. Oligschlaeger would
12 be able to answer under oath the same question that
13 Chairman Kenney just proposed.

14 JUDGE JORDAN: Thank you.

15 And for the --

16 CHAIR KENNEY: You'll have to remember
17 to ask him.

18 JUDGE JORDAN: And for the witness, if
19 the Commission or anyone else were to ask you
20 what's been asked of Counsel, would you agree with
21 his answers?

22 THE WITNESS: I do.

23 JUDGE JORDAN: Thank you.

24 Any further questions from the bench?

25 Mr. Chairman.

IN THE MATTER OF MAWC

1 CHAIR KENNEY: No, thank you.

2 JUDGE JORDAN: Commissioner Hall.

3 COMMISSIONER HALL: None. Thank you.

4 JUDGE JORDAN: Thank you. You may stand
5 down.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 JUDGE JORDAN: Does that conclude
9 Missouri-American's case in chief?

10 MR. COOPER: It does, Your Honor.

11 JUDGE JORDAN: Thank you.

12 Then let's continue with the case in
13 chief of Staff.

14 MS. MAYFIELD: Your Honor, I would call
15 Mark Oligschlaeger. And, Your Honor, I believe
16 that Staff's exhibits have been marked Exhibits 3
17 and 4. Is that a correct understanding?

18 COURT REPORTER: Yes.

19 MS. MAYFIELD: Yes. Okay. From the
20 court reporter I do understand that Staff's
21 exhibits, his direct has been marked Exhibit
22 Number 3 and rebuttal of Mr. Oligschlaeger has been
23 marked as Exhibit Number 4.

24 COURT REPORTER: Yes.

25 JUDGE JORDAN: Thank you.

1 Please raise your right hand.

2 MARK OLIGSCHLAEGER,

3 after having been first duly sworn, was
4 examined and testified on his oath as follows:

5 DIRECT EXAMINATION BY MS. MAYFIELD:

6 Q Could you please state your name.

7 A Mark L. Oligschlaeger.

8 Q And, Mark, where are you currently
9 employed and in what capacity?

10 A I am employed by the Missouri Public
11 Service Commission as manager of the auditing unit.

12 Q Did you cause to be prepared in this
13 matter direct and rebuttal testimony?

14 A I did.

15 Q And is it your understanding that that
16 direct and rebuttal testimony has been marked as
17 Exhibits 3 and 4?

18 A Yes.

19 Q Do you have any changes to either the
20 direct or rebuttal testimony?

21 A I do not.

22 Q If I were to ask you the same questions
23 as contained in your direct and rebuttal testimony,
24 would your answers be the same?

25 A They would.

1 **Q Are those answers true and accurate to**
2 **the best of your knowledge?**

3 A Yes.

4 MS. MAYFIELD: Your Honor, I would move
5 for the admission of Exhibits 3 and 4 into the
6 record.

7 JUDGE JORDAN: I'm not seeing any
8 objections. Those exhibits are received into the
9 record.

10 (Exhibits 3 and 4 received.)

11 JUDGE JORDAN: Anything else for this
12 witness before I ask for cross?

13 MS. MAYFIELD: No, Your Honor.

14 JUDGE JORDAN: Okay. Cross-examination
15 from the Office of Public Counsel?

16 MS. BAKER: No questions. Thank you.

17 JUDGE JORDAN: Cross-examination from
18 Missouri-American?

19 MR. COOPER: No questions.

20 JUDGE JORDAN: Questions from the bench?
21 Mr. Chairman.

22 CHAIR KENNEY: No, I'll let Mr. Hall go
23 first.

24 JUDGE JORDAN: Commissioner Hall.

25 EXAMINATION BY COMMISSIONER HALL:

1 **Q Good morning.**

2 A Good morning.

3 **Q So you were obviously in the hearing**
4 **room during the discussion about whether the 10**
5 **percent cap applies to an annual amount received or**
6 **the amount received over a three-year time period?**

7 A I was.

8 **Q Could you explain to me your -- your**
9 **understanding of the 10 percent cap?**

10 A As I understand the 10 percent cap, it
11 is intended to be a limit on the amount of annual
12 revenues a qualifying utility is authorized to
13 recover through an ISRS rate. And as an annual
14 amount, obviously the amount of revenues a company
15 can collect over the entire life of an ISRS, which
16 can go beyond one year, can be greater than the
17 amount of the annual cap.

18 **Q And is it -- is it your understanding**
19 **that when the Commission approves of a surcharge**
20 **amount in year one that that surcharge amount**
21 **continues forward until the next rate case, absent**
22 **some -- some change in the tariff ordered by the**
23 **Commission?**

24 A If I understand your question, yes, the
25 surcharge established in the first year of an ISRS

1 will continue on. It may be added to under certain
2 conditions. But, yes, the amount, for example,
3 reflected in year one may be presumed to continue
4 to be collected in years two and three, until the
5 Company files a general rate case.

6 **Q And so at the -- at the next rate case**
7 **when the ISRS is set -- reset to zero, the Company**
8 **will have recovered its out of pocket -- its**
9 **out-of-pocket expenses for the construction or**
10 **purchase of a plant or plant equipment,**
11 **depreciation on that plant and equipment, a rate of**
12 **return established in the prior rate case on that**
13 **plant and equipment, and property taxes paid?**

14 A I might quibble with the term out of
15 pocket. What it would recover is its normal
16 revenue requirement associated with those plant
17 additions, which is depreciation expense, property
18 taxes in some instances, and a rate of return
19 factored up for income taxes.

20 **Q So is that a three-year depreciation?**

21 A Well, no. What you would do is you
22 would apply the approved depreciation rates for
23 whatever accounts the qualifying plant is booked
24 to; and if that's, for example, assuming a 20-year
25 life, they would collect 1/20th of the depreciation

1 on that asset each year through the ISRS rate, and
2 that treatment would continue as part of the
3 general rate case.

4 **Q Okay. This is beginning to come**
5 **together. So do you know what the total**
6 **expenditure was for the ISRS-eligible plant and**
7 **equipment during the term of this ISRS?**

8 A I do not. That number can be provided,
9 I believe, but I do not have that at my fingertips.

10 **Q Okay. Do you know what the current**
11 **surcharge is, the ISRS surcharge?**

12 A The rate itself, no. I know what
13 amounts of money it is designed to collect on an
14 annualized basis.

15 **Q So on an annualized basis it is**
16 **currently designed to recover what amount? That's**
17 **the \$23 million number; right?**

18 A No. As Staff would state it, it's the
19 \$25.6 million amount.

20 **Q Oh, that's -- that's the authorized ISRS**
21 **revenue. Okay.**

22 A Correct.

23 **Q So let me ask you this: If -- if the --**
24 **if consumption decline continues consistent -- let**
25 **me rephrase. If the consumption decline going**

1 forward was consistent with the consumption decline
2 historically, that we continue to see the same type
3 of decline that we have the last two years, if we
4 see that same decline in the next year --

5 A Yes.

6 Q -- and the Commission were to adopt the
7 Company's interpretation of the statute that we
8 should not include the reconciliation amounts in
9 determining the cap --

10 A Yes.

11 Q -- what -- do you believe that the
12 annual revenues from the ISRS would exceed the
13 statutory cap?

14 A Okay. Let's make sure I understand the
15 assumptions. If the pattern cited by the Company
16 of declining usage since the last rate case
17 continues past this point and is applicable to the
18 new -- whatever the new ISRS recovery is, would
19 they recover the amount authorized from this case,
20 all other things being equal of their --

21 Q Well, not the amount authorized by the
22 case -- yeah -- well, would they -- would they
23 recover beyond the \$25.8 million cap --

24 A If the --

25 Q -- if we adopted their interpretation of

1 **the statute?**

2 A If their -- okay. Their interpretation
3 of the statute, which is you should only include
4 the initial revenue-authorized amount based on
5 initial assumptions as to customer usage. Okay.
6 Let me think about that. I don't believe they
7 would be in excess of the cap. In fact, they may
8 be under the cap because they did not fully recover
9 all of the ISRS revenues authorized as a result,
10 hypothetically, of this case because of continuing
11 declining usage.

12 **Q So if we take the position that the cap**
13 **applies to revenues exclusively and not to**
14 **authorization, then we could -- we could authorize**
15 **over the cap and arrive at the amount equal to or**
16 **below the cap?**

17 A If you're asking could you assume a
18 continuing pattern of declining usage and authorize
19 the Company to recover more than 10 percent of the
20 revenue target with the assumption that would bring
21 them in close to or below the revenue target when
22 all is said and done, I don't know whether legally
23 you could do that; but, I mean, that's an approach.

24 **Q Well, let's -- let's say we did that.**
25 **Could we put a tracker on it such that it would**

1 **capture any over recovery and -- and establish a --**
2 **a regulatory liability in the next rate case?**

3 A Again, I don't mean to get into the
4 legalities of it. I'm not aware certainly that the
5 statute or the rule contemplates such a thing. My
6 assumption as a layman would be the Commission
7 would have general powers to do that in that case.

8 Q **And, actually, to clarify, I wasn't**
9 **really asking for a legal analysis. I was really**
10 **asking more mechanically would that -- would that**
11 **work in order to assure that the amounts received**
12 **was -- were below the cap? And I think you said**
13 **yes?**

14 A I believe so, yes.

15 Q **Okay. Can you -- I read your -- your**
16 **direct and rebuttal testimony, and you made the**
17 **argument that the Commission Rule 240-2.650(17)**
18 **does not allow or require a regulatory asset be**
19 **established should the -- should the Commission**
20 **adopt Staff's position in this case?**

21 A Yes, that is correct.

22 Q **Can you explain why that is?**

23 A Sure. That particular section, by my
24 reading, applies to cases where the Commission has
25 authorized a certain amount of ISRS revenues and

1 the Company had either over or under collected, and
2 it describes what happens to those under and over
3 collections if a general rate case is filed before
4 a full reconciliation can be done. I think that's
5 separate and distinct from a situation where the
6 Commission has determined an overall cap exists and
7 the Company is not authorized in the first place to
8 include certain ISRS-related costs in its ISRS rate
9 because of the cap.

10 **Q So it goes to the -- to the issue that I**
11 **raised with your counsel about over/under recovery.**
12 **That is related to what is authorized; that's not**
13 **necessarily what is related to the cap?**

14 A That certainly would be my reading of
15 that.

16 COMMISSIONER HALL: All right. I have
17 no further questions. Thank you.

18 JUDGE JORDAN: And did that question
19 generate any recross from OPC?

20 MS. BAKER: No. No, Your Honor.

21 JUDGE JORDAN: From Missouri -American?

22 MR. COOPER: No, Your Honor.

23 JUDGE JORDAN: Any redirect from -- from
24 Staff? Sorry.

25 MS. MAYFIELD: No, Your Honor.

IN THE MATTER OF MAWC

1 JUDGE JORDAN: Then you may stand down.

2 (Witness excused.)

3 JUDGE JORDAN: Does that conclude
4 Staff's case in chief?

5 MS. MAYFIELD: Yes, Your Honor.

6 JUDGE JORDAN: Very good.

7 I mentioned earlier the briefing in this
8 case. Briefs are due on the 12th of this month,
9 according to our schedule. So we will need an
10 expedited transcript. We will need this transcript
11 prepared on an expedited basis.

12 Is there anything else before we go off
13 the record? Not hearing anything. Then we will
14 adjourn the evidentiary hearing, and we will go off
15 the record.

16 Thank you, everyone.

17 (Hearing adjourned.)

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IN THE MATTER OF MAWC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

THE COMPANY' S

JEANNE TINSLEY	39
Direct Examination By Mr. Cooper	39
Examination By Commissioner Hall	41
Redirect Examination By Mr. Cooper	48
Further Examination By Commissioner Hall	51
Examination By Judge Jordan	57
Further Examination By Commissioner Hall	60
Examination By Chairman Kenney	61

STAFF' S EVIDENCE

MARK OLIGSCHLAEGER	76
Direct Examination By Ms. Mayfield	76
Examination By Commissioner Hall	77

IN THE MATTER OF MAWC

E X H I B I T I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	Marked	Rcv' d	
1	Ti nsl ey Di rect	3	41
2	Ti nsl ey Rebuttal	3	41
3	Oli gschl aeger Di rect	3	77
4	Oli gschl aeger Rebuttal	3	77

IN THE MATTER OF MAWC

CERTIFICATE OF REPORTER

I, Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Angie D. Threlkeld

Angie D. Threlkeld



IN THE MATTER OF MAWC

<u>A</u>				
ability 18:1	55:10 62:20	46:2 54:6	11:11 27:19	appear 61:2
19:21 21:24	69:2	55:21	32:16 37:10	appearance 3:25
30:13 88:7	added 79:1	allow 7:20 35:7	58:24 72:23	4:7
able 38:21 42:3	adding 11:21	44:25 83:18	80:13 81:8	appeared 6:13
42:9 44:5	61:3 63:12	allowed 19:4	83:11	appearing 4:9
46:11 47:5	addition 69:20	25:5,7 48:2	analysis 83:9	4:20
53:19 54:19	additional 6:24	73:13	Angie 1:19 88:3	applicable 81:17
65:11 74:12	30:13,14,18	allowing 25:6	88:20	Applicant 4:7
absent 71:25	46:6 67:19	29:23 31:8	annual 47:13	5:12
78:21	69:2 72:16	35:17,25	50:20,20,23,23	Applicants 39:4
Absolutely	Additionally	allows 12:14	50:25 53:10,15	application 3:13
71:17	28:1	alternative 29:9	53:16 54:3,16	5:19 11:23
absolve 33:11	additions 79:17	amazingly 14:8	63:23 64:1	28:25 32:1
abuses 33:18	address 4:11	Ameren 28:9	66:10 67:10	34:4 43:2
account 13:17	adequate 31:14	38:2	69:10 71:5	applies 8:18
16:19 22:11	adjourn 85:14	American 1:11	78:5,11,13,17	45:11 78:5
27:22 42:18	adjourned 85:17	39:23	81:12	82:13 83:24
47:6 49:20	adjusted 15:14	amount 6:19 7:8	annualized	apply 8:10 17:4
accountant	adjustment 7:22	9:16 12:24	26:17 51:16	45:9 79:22
35:12 38:18	9:3 10:5 27:9	15:2 16:13	52:1,9,9,12	approach 11:13
accounted 37:12	27:11 28:9,13	18:12,22 19:25	55:25 56:3	11:24 51:2,4
37:13	38:2 61:15	20:1 25:17,23	68:3,20 70:14	82:23
accounting	adjustments	25:24 26:3,10	71:15 80:14,15	appropriate
38:21	8:17 73:3	27:16 31:20	annually 62:2	10:2,9,10 27:6
accounts 79:23	admission 77:5	33:24 34:4	65:2 69:1 72:5	27:10 44:19
accumulation	admitted 41:6	36:16 37:23	answer 35:11,12	49:2
33:10	adopt 26:2 43:9	44:8,12 45:4	38:4,21 40:3	approval 1:12
accurate 14:9	47:1 81:6	45:25 46:10,21	68:12 73:22	3:7 27:9 32:18
77:1	83:20	47:22 52:14	74:12	approve 33:24
acknowledge	adopted 20:6	53:16 55:6	answering 26:7	approved 6:20
12:21	81:25	58:16 59:2,10	answers 40:18	24:22 26:20
acronym 3:9	advance 18:2	60:4,17 61:16	40:20 50:14	30:25 38:15
act 33:17	advanced 33:2	61:16 66:3,21	74:21 76:24	79:22
action 3:4,11	affect 72:24	67:10,23 68:3	77:1	approves 78:19
5:18 71:25	agendas 5:15	68:20 69:7	anticipated	approving 5:19
88:10,14	agree 12:12 20:6	70:3 73:10	14:11,13	argument 26:2
acts 31:8 33:11	20:19 25:16	78:5,6,11,14	anticipating	74:6 83:17
33:19	26:23 31:5	78:14,17,20,20	44:13	arrive 82:15
actual 18:12	34:23 43:15,18	79:2 80:16,19	anybody 6:1	Arriving 69:11
33:13 44:21	57:6,8 74:20	81:19,21 82:4	apparently	articulated
45:11,20 46:14	agreement 25:12	82:15 83:25	55:22	36:11
55:13	25:21 74:7	amounts 8:12,23	Appeals 7:17	asked 18:15
add 53:25 55:8	agrees 15:19	9:20 10:11,13	12:8 34:21	32:20,24 34:23
	18:21 19:2	10:17 11:1,10	36:13	37:1 74:20

IN THE MATTER OF MAWC

asking 3:14 31:3 34:3 37:1 43:15 48:24 63:5 74:8 82:17 83:9,10	16:18 29:23 37:17 82:14 authorize 25:18 30:9,13,17 37:21,22,23 38:8,12,14 44:8,20,23 82:14,18	34:23 37:1 41:12 48:16 54:8 57:9 77:16 84:20 balance 18:8 19:9 ball 14:8 banker 33:19 bankruptcy 24:6 base 6:20 10:21 25:3 26:20 29:13 33:23 36:3 38:15 42:17 67:15 based 7:25 9:15 11:15 17:17 18:5 35:4 44:3 60:19 82:4 basing 43:24 basis 15:14 17:18 26:18 48:5 51:16 52:1,9,10,12 55:25 67:1,16 69:18 80:14,15 85:11 bear 47:10 beautiful 31:2 beginning 80:4 behalf 4:10,20 behaviors 24:13 belief 6:14 40:22 43:21 44:20 53:14 54:2 believe 5:2,25 6:18 8:13 9:10 12:18 15:16 16:23 36:5 37:2,4 38:6,10 44:6,18 45:8 45:10 46:11 48:4 52:11 53:12 56:13	57:9 59:23 75:15 80:9 81:11 82:6 83:14 believes 7:10 8:3 12:5 13:13 19:7 43:19 bench 19:12 34:12 41:16 72:11 74:24 77:20 benefit 14:20,21 14:24 15:5,9 15:12 18:2,3 best 40:21 57:12 77:2 88:6 bet 23:3 bets 12:11 better 35:11 beyond 30:5 78:16 81:23 bill 32:10 36:2 bit 15:25 16:7 23:14 48:21 50:17 74:4 board 23:5,7,10 23:12,18,21 24:3 31:2 boils 25:22 book 12:14 17:2 31:11 35:8 49:11,12 booked 35:15 79:23 booking 31:19 32:11 34:6 49:16 bottomless 18:19 Box 2:4 break 34:9 52:20 breaking 16:6 briefing 5:10	85:7 briefs 5:10,12 45:19 85:8 bring 82:20 Brothers 23:20 brought 20:24 23:12 66:20 71:23 Brydon 2:3 4:9 build 70:10 built 73:10 business 18:18 busted 23:18 buy 70:10 <hr/> <p style="text-align: center;">C</p> <hr/> C 2:1 calculated 9:15 43:25 calculation 9:20 18:10,25 27:21 27:22 31:5 calendar 9:25 call 39:5 58:1,2 70:20 75:14 calling 3:3 cap 7:9 8:10,16 9:11 11:24 15:22 18:9,25 19:5,8,16 24:21 25:13,24 26:5,16 27:20 27:21 28:5,18 29:4,8,19 30:15 31:5,21 32:12 33:9 35:1 37:18,20 38:6,7,8 43:11 44:10 45:9,10 46:2 47:12,13 47:13 50:22,24 52:6,7,16 53:10,10,15,15 53:21 54:3,7
assess 11:23 asset 12:16 17:1 19:4 20:9,18 22:8 30:23 31:12,21 34:7 35:9,15 80:1 83:18 assigned 3:11 associated 6:24 8:6 12:2 18:23 27:13,18 30:15 37:20 49:7,12 49:13 50:7 60:17 61:16 65:24 66:3,5 66:10,14 70:21 73:6 79:16 assume 54:19 72:6 82:17 assumed 14:14 assumes 57:1 assuming 11:16 79:24 assumption 35:6 44:21 55:3 82:20 83:6 assumptions 57:3 81:15 82:5 assure 83:11 attempts 30:4 attention 36:24 attorney 2:2 88:11 auditing 76:11 authority 22:3,7 22:10 31:19 authorization	authorized 11:19 18:23 26:3 27:17,23 30:11 32:16 37:21 38:19 45:2,4,10,25 46:9 59:1 60:19,25 61:8 62:13 78:12 80:20 81:19,21 82:9 83:25 84:7,12 authorizes 30:2 automatically 22:12 available 13:2 avenue 2:3 42:4 avoid 31:9 aware 23:24 83:4 <hr/> <p style="text-align: center;">B</p> <hr/> B 87:1 back 19:22 21:1 29:13 31:1 33:6 44:1 53:4 67:2 68:22 back-of-the-e... 43:3 Baker 2:10 4:19 4:19 17:15 19:14,18 20:11 20:21 21:5,7 21:11,12,17,19 21:23 22:5,10 22:18,21,24			

IN THE MATTER OF MAWC

54:16 55:20 59:17 60:12 62:1,6,16 63:2 63:12,14,16,17 63:21,22 64:2 69:19 71:2 78:5,9,10,17 81:9,13,23 82:7,8,12,15 82:16 83:12 84:6,9,13 capacity 39:22 76:9 capital 31:13 Capitol 2:3 caption 3:5 capture 83:1 card 31:4,7,8 carefully 30:6 case 3:5 5:22 6:15,18 7:23 11:2,9 12:17 12:17,25 13:13 13:16,21 14:7 16:20 19:22 20:12,14,19,22 20:25 22:1,9 22:11,14,17 23:11,17 24:14 24:25 26:3,12 28:15 29:10,22 30:10 31:25 32:2,14 33:1 34:18,18,19,21 36:3,7,7,13 39:4 42:1,6,6 42:11,16 44:1 45:17 46:3 47:7 49:9,18 55:16 59:1 60:6 63:19 64:22,25,25 65:9,15 66:4 67:14 75:9,12	78:21 79:5,6 79:12 80:3 81:16,19,22 82:10 83:2,7 83:20 84:3 85:4,8 cases 13:24 18:11 32:7 63:19 69:8 83:24 cash 18:19 categorize 73:5 cause 76:12 caused 40:1 causes 52:7 CCR 1:19 88:4 cell 3:15,18 certain 17:19,23 40:2 74:11 79:1 83:25 84:8 certainly 6:9 13:12 53:13 83:4 84:14 certainty 55:8 CERTIFICATE 88:1 Certified 88:3 certify 88:5 CHAIR 19:14 20:5,16 21:3,6 21:8 34:14,17 34:22 35:7,14 35:24 36:6,18 41:18 61:22 63:22 64:23 67:21 68:2,7,9 68:21,25 69:5 69:14,17,19,23 70:1,13,18 71:13,18 72:13 72:21,25 73:7 73:12,18,25 74:3,16 75:1	77:22 Chairman 19:13 34:13 41:17 61:20,25 64:12 65:5,10 67:24 68:15 72:12 74:13,25 77:21 86:9 chance 31:4,7 34:10 change 1:12 3:7 9:1,2,8 10:7 12:1 32:15 40:11,14 78:22 changed 32:7 changes 9:5,7 40:9 46:18 76:19 characterizati... 35:22 73:13,15 characterize 73:5 characterizing 35:19 charge 32:19 38:2 72:15 charged 25:8 33:13 charges 10:21 chart 60:15 62:2 66:2 67:18 chief 39:4 75:9 75:13 85:4 Christina 2:10 4:19 citation 34:19 cite 34:17 cited 8:14 34:20 81:15 citing 6:8 City 1:7 2:4,8,12 claim 33:2 clarification 54:13	clarified 68:13 clarify 51:3 83:8 class 32:8 clause 28:9 clear 28:21 30:5 32:12 34:8 50:13 clearly 32:4 62:16 63:1 close 29:18 30:3 30:6 82:21 collect 15:21 16:1,12 24:21 44:25 56:9 57:3 60:25 63:7 64:5,5,13 64:15,20 65:7 65:10,11,13 68:25 72:16,18 73:14 78:15 79:25 80:13 collected 16:3 25:23 38:19 44:11 45:1,12 46:9 55:24 57:2 79:4 84:1 collecting 24:3,4 24:18 31:10 57:17 collection 7:3 8:24 27:23 29:12 31:6 44:4 69:10 collections 16:16 18:24 37:6,11 84:3 collects 37:24 column 60:17 66:2 combination 8:11 come 19:21 20:11,23 21:1 29:10,18 71:11	72:4 80:4 comes 26:25 coming 20:13 31:24 33:6 comment 61:24 Commission 1:1 2:7,9 3:3 5:17 5:20 6:21 7:5 10:3,23 11:2 12:9,12,13 15:19 16:21,24 17:16 18:15,23 21:13 22:3 23:3 24:11 25:18 26:1,4,7 26:16,21 27:7 27:9,17 28:8 30:9,10,12,17 30:25 31:4,19 32:16 33:24 34:3 36:24 37:5,21,22,23 38:11,13,16 41:25 42:17 43:8 44:19,23 46:25 47:5 53:12 59:20 71:25 74:19 76:11 78:19,23 81:6 83:6,17 83:19,24 84:6 Commission's 9:7 10:14 12:19,22 31:13 Commission-o... 11:6 Commissioner 13:4,5,8,14,25 14:5,16,19 15:11,18 16:5 16:14 17:5 21:9,10,13,18 21:22 22:2,6 22:15,19 36:20
--	---	---	---	--

IN THE MATTER OF MAWC

36:21,23 37:7 37:14 38:5,23 41:20,21,22 48:11,24 51:21 51:24,25 52:19 52:25 53:5 54:9,11,12,21 55:1,10 57:10 59:14,25 60:2 60:3 61:18 63:20 66:15,19 66:23 67:4 68:14 69:25 70:4,8 71:20 72:3,9 75:2,3 77:24,25 84:16 86:6,7,8,13 commissioners 1:17 17:9 22:23 39:1 48:14 company 1:11 3:7 4:10 6:5,16 9:4 12:14 13:12 14:20 15:6,20,20 16:3,10,11 24:10 32:1 39:24 42:20 43:20 48:25 53:9,19 60:5 78:14 79:5,7 81:15 82:19 84:1,7 Company's 25:2 32:23 73:9 81:7 86:3 comparing 37:16,17 54:4 completed 12:4 18:11 46:24 completely 9:21 compliance 5:20 component 31:6	components 30:23 comprised 68:16 comprises 68:19 concede 35:2 concedes 34:25 conceivable 54:17 conceivably 65:1 concept 23:25 concerned 53:9 concerning 10:11 conclude 75:8 85:3 conditions 79:2 conforms 28:10 confused 45:17 60:11 61:22 62:4 65:5 confusing 52:22 confusion 52:7 connects 20:3 consider 12:14 consideration 12:16 considered 11:8 consistent 12:18 30:19 80:24 81:1 consists 67:9 construction 28:2 79:9 construing 28:3 consumption 13:11,17 14:2 14:10,11,12 44:7,8,14 80:24,25 81:1 contained 40:17 76:23 contains 6:8 8:15	contemplate 17:22 contemplated 12:23 32:13 contemplates 83:5 contemplating 50:19 context 7:18 contingencies 28:11 continue 14:25 62:23 64:19 71:25 72:7 75:12 79:1,3 80:2 81:2 continues 52:16 66:11,16,24 78:21 80:24 81:17 continuing 82:10,18 contradictory 64:24 contrary 12:6 control 21:3,7 24:6 26:10 controversy 6:17 Cooper 2:2 4:4,8 4:8 5:3 6:6 13:6,7,12,20 14:3,14,17,23 15:13,24 16:6 16:23 17:7,11 21:14 39:5,18 40:24 48:21,22 51:1,6,9,18 52:18 53:7 54:14,19,25 55:2,12 56:11 56:13,18,25 64:12 65:18 66:17,22,25	67:8,24 68:5 68:12,24 69:4 69:13,15,18,22 70:7,16,19 71:17,19 72:2 72:4,22 73:4,8 73:17,21 75:10 77:19 84:22 86:6,7 Cooper's 25:15 54:7 65:3 corporation 9:25 10:18,22 27:4 corporation's 26:20,21 38:15 correct 4:1,2,4 7:12,14 13:19 35:6 36:5 40:20 42:14 44:11 45:12 46:20 47:3,14 47:15 49:16,20 49:21 50:2,3,7 50:8,12 53:13 56:17,24 57:21 57:22 58:9,17 58:20 59:8 61:7,10 62:19 64:17 66:22 67:24 68:6 69:4,22 72:20 74:8,11 75:17 80:22 83:21 cost 33:13 66:10 66:14 costs 7:21 8:5,11 8:18,19 9:16 9:20 10:16 11:15,19,22,23 15:7 17:16 18:4,4,6,13 19:5 32:19,20 32:22 36:2	65:24 66:5,7,8 70:9,21,24 71:3,5,5 73:6 84:8 counsel 2:7,12 4:18,20 17:14 18:15,21 19:2 19:6 28:16 32:2 41:11 54:8 65:19 74:6,9,20 77:15 84:11 88:8,12 Counselor 13:3 23:13 65:16 Counselors 4:5 count 5:13 counter 31:12 31:15 couple 34:14 47:9 course 7:10 71:10 court 1:20 4:11 4:16,22 7:17 12:8 34:21 36:12 75:18,20 75:24 88:3 creating 26:8 cross 77:12 cross-examina... 4:25 41:9,10 41:13 77:14,17 crystal 14:8 CSR 11:4 21:14 36:24 current 6:23 7:1 25:19 30:10,12 30:19 44:3 46:18,21,22,23 57:12 63:5 80:10 currently 49:16 76:8 80:16
--	---	--	--	--

IN THE MATTER OF MAWC

currently-aut... 11:22	defer 32:19	difference 25:21 27:10 46:8 53:11	document 6:7 8:14	39:23 76:9,10 88:9,12
customer 10:23 11:16 15:3,9 15:12 18:3,17 19:8 25:8 29:14 32:8 36:1 82:5	deferral 33:4,7 50:10	differences 10:1 27:5	dollars 7:4 47:6 58:18	employee 88:11
customer's 32:10	deferrals 33:10	different 10:6 11:10 12:20 39:9 55:19 61:6 67:20 68:3	domination 24:1	ends 10:4 33:22 58:7
customers 4:21 8:4 18:1,8,17 20:1 27:23 33:14	defined 8:20 29:1	differentiation 10:15	draw 31:4	England 2:3 4:9
cycle 18:11	definition 10:9	differently 11:12	drive 54:20 55:5 70:23	enjoys 23:4 33:19
Cydney 2:7 4:14	degree 25:4	direct 25:9 36:23 39:8,11 39:18 40:2,13 44:18 54:14 58:11 60:16 75:21 76:5,13 76:16,20,23 83:16 86:6,12 87:3,5	drives 66:7 67:19	ensures 27:21
D	delineated 36:1	direction 49:23 88:8	driving 24:5 68:15	ensuring 24:12 33:20
D 1:19 2:7 86:1 87:1 88:3,20	demise 24:14	directions 16:25	drove 53:20	entire 24:7 27:16 62:9 78:15
Dalton 23:8	deny 8:4 11:13 34:5 42:1	directly 36:10 38:3	due 5:12 8:21 85:8	entity 24:2
Daniel 1:15,17 3:10	depending 5:17	directs 26:16 43:15	duly 39:15 76:3	entries 3:25 4:6
data 44:1	depreciation 8:20 42:9,21 43:1 49:6,11 49:13,16,19 50:1 67:9 68:17 70:12 79:11,17,20,22 79:25	disagree 43:13 43:15	E	envisioned 28:12 42:24
date 5:10,14 30:10	derived 24:22	disagreement 27:14	E 2:1,1 86:1 87:1,1	equal 53:21 66:21 81:20 82:15
dates 5:16	describe 57:16 57:23	disagree 43:13 43:15	earlier 31:22 51:8 85:7	equally 17:4
day 23:7	described 35:21 38:13	directions 16:25	early 48:23	equals 6:19
days 5:13	describes 84:2	directly 36:10 38:3	easily 28:6	equipment 54:24 55:11 61:12 70:11 79:10,11,13 80:7
Dean 2:2 4:8	description 9:8 9:14 54:7	directs 26:16 43:15	East 2:3	equity 25:4
debatable 18:3	descriptor 57:13	disagree 43:13 43:15	economic 23:25	erroneous 12:8
decided 32:2	design 8:1,2 50:18 57:1	disagreement 27:14	economy 24:7	essence 44:6
decides 5:17	designed 16:4 24:19 26:9 31:14 47:18,21 48:5,6 50:16 66:25 67:1 80:13,16	discussing 6:12	effect 9:18 27:4 33:11 58:4 64:21 71:22	essentially 12:10 31:3
decisions 18:18	design 8:1,2 50:18 57:1	discussion 49:5 53:8,18 78:4	effective 5:14 10:22	establish 8:25 9:8 30:22 35:17 83:1
decline 14:2,11 14:13,15 44:7 44:7,14 80:24 80:25 81:1,3,4	designed 16:4 24:19 26:9 31:14 47:18,21 48:5,6 50:16 66:25 67:1 80:13,16	dispute 6:15 13:18,23 14:4 26:1 34:2	effects 18:7	established 47:18 78:25 79:12 83:19
declined 44:2	determined 19:5 43:25 84:6	distinct 84:5	eight 46:5 51:14	establishes 22:16
declining 8:3 13:11,17 16:9 81:16 82:11,18	determining 7:8 27:24 81:9	District 7:17 31:24 32:3 34:18,21 35:23 36:7,12	either 14:24 64:24 76:19 84:1	establishing 10:23
deem 11:10	development 7:1	divide 25:21	employed 39:21	establishment
deemed 9:6 49:2	differ 55:13			

IN THE MATTER OF MAWC

10:6 25:3 29:15 estimate 18:6 19:24 evaluated 30:6 event 31:4 everybody 46:1 evidence 6:10 33:2 40:25 86:10 evidentiary 1:5 3:12 85:14 exact 18:18 21:20 58:24 exactly 24:9 36:10 46:4 Examination 39:18 41:22 48:22 51:25 57:15 60:3 61:25 76:5 77:25 86:6,6,7 86:7,8,8,9,12 86:13 examined 39:16 76:4 examining 32:3 example 31:1 53:17,17,22,25 65:25 70:25 71:6 79:2,24 exceed 26:4 81:12 exceeded 16:17 exception 17:22 18:14 30:2 exceptions 17:20 excess 26:19 56:1,5 82:7 exclusively 82:13 excuse 6:23 excused 75:7 85:2	exercising 24:20 Exhibit 75:21,23 exhibits 3:1 5:1 5:4 39:8 40:6 40:17,25 41:3 41:6,7 75:16 75:16,21 76:17 77:5,8,10 exist 66:9 existing 73:11 73:11 exists 11:6 34:9 84:6 expand 30:5 expedited 42:24 85:10,11 expenditure 70:10 80:6 expenditures 31:14 47:19 60:5,13 expense 31:12 32:11,19,25 34:6 43:1 48:7 49:6,16,19 50:1 67:9 79:17 expenses 8:20 25:3 33:7 35:1 42:3 47:19 79:9 experienced 11:18 14:18 16:9 50:2 explain 62:5 68:19 78:8 83:22 explained 68:16 express 30:7 expressly 28:11 30:1 extent 15:7 53:11 extraordinary	32:21 extreme 53:17 <hr/> <p style="text-align:center">F</p> <hr/> fact 9:23,24 11:15 19:22 20:13 82:7 factored 79:19 facts 6:18 factual 6:15 failure 8:1 Fair 68:7 falls 33:25 familiar 59:12 far 58:23 far-right 66:2 fashion 37:12 73:5 favor 19:9 favorite 23:7 figure 25:16,25 26:23 figured 68:20 figuring 46:3 file 1:12 3:4 10:20 26:11 33:12 42:5,11 48:2 64:21 65:9,15 filed 5:12 6:15 20:13 42:13 84:3 files 28:24 79:5 filing 5:18 8:22 11:9 21:6 28:19,23 29:10 30:19 63:5 64:1 65:13 filings 29:22 final 52:13 Finally 32:18 financial 32:23 financially 88:13 fine 5:6 39:10	43:5 fingertips 80:9 firm 4:9 first 6:2 8:13 12:17 17:24 23:9 26:14 29:16 32:4 39:15 41:10 50:15 51:10 52:13 54:1 58:4 60:23,25 61:3,4,4,8 62:13 63:11,17 64:18 65:8,13 67:6 69:21 70:5 71:1,2,24 76:3 77:23 78:25 84:7 fiscal 58:1,12 fit 9:6 five 51:14 53:1 five-minute 52:20 flow 18:20 followed 12:9 following 10:23 52:4 follows 3:5 26:17 27:2 28:2 39:16 76:4 foregoing 88:5,6 forget 5:9 forgotten 23:11 form 26:25 27:25 40:3 57:11 forth 33:17 forward 42:10 42:25 78:21 81:1 found 10:3 26:14 27:1,7 30:20 31:17,21	32:4 36:13 four 51:14 66:9 free 31:8 fuel 28:9 38:2 full 7:13 52:14 84:4 fully 82:8 fundamental 45:20 further 9:13 10:15 11:21 23:15 48:12 51:25 60:3 61:21 72:10 74:24 84:17 86:7,8 88:10 future 12:16 13:16 14:1,7 18:4,6 19:24 35:25 44:7,13 50:11 <hr/> <p style="text-align:center">G</p> <hr/> gamble 21:1 game 23:7,24 24:2,16 33:19 games 23:5 gas 7:18 32:1 36:7 general 6:22 7:23 10:24 24:25 26:12,22 28:15,19 29:10 29:21 33:12 37:10 79:5 80:3 83:7 84:3 generally 72:24 generate 48:15 56:6,22,22 58:14,19 59:17 84:19 generated 58:22 59:3 get-go 45:17
--	--	--	--	---

IN THE MATTER OF MAWC

65:20	Hall 1:17 13:4,5	85:13,14,17	identify 5:4	instances 79:18
give 21:23	13:8,14,25	88:5,6,10	ignore 31:23	intend 8:10 9:10
given 5:15 30:4	14:5,16,19	hearings 6:13	imminent 42:12	intended 78:11
30:7 62:11,12	15:11,18 16:5	heart 26:6	impact 32:22	intent 7:19,25
gives 22:2,6,10	16:14 17:5	hedge 12:11	impacted 38:3	12:7 28:10
go 11:1 24:17	21:9,10,13,18	help 13:22	implemented	30:4,20 33:9
66:13,14 67:2	21:22 22:2,6	helps 68:19	10:19	34:8
68:22 77:22	22:15,19 36:20	highlighted 37:4	important 24:25	interested 88:13
78:16 85:12,14	36:21,23 37:7	highly 64:19	impossible 60:23	interim 28:13
goal 24:5	37:14 38:5,23	historic 13:15	impression 32:4	interpret 18:15
goes 5:21 31:12	41:20,21,22	historical 17:18	inception 45:14	52:3
31:15 36:16	48:11,24 51:21	historically 81:2	60:6	interpretation
49:14 84:10	51:24,25 52:25	hit 29:4 30:15	include 10:10	7:7,24 12:6,13
going 3:14,15	53:5 54:9,11	31:21 44:9	31:6 70:9 81:8	14:20 28:1
17:14 19:23	54:12,21 55:1	57:1 68:13	82:3 84:8	37:19 43:9
22:13 36:1,25	55:10 59:25	71:7	included 7:2,8	47:1 81:7,25
42:10,25 49:22	60:2,3 61:18	hits 29:8	7:13,15 18:25	82:2
57:3 63:16	63:20 66:15,19	hitting 29:18	27:20 61:15	inure 14:20,21
65:23 67:5,13	66:23 67:4	72:6	includes 32:16	invest 46:13
70:5 71:4	68:14 69:25	Honor 4:3,14	63:6	62:23 71:1
72:14 80:25	70:4,8 71:20	5:2 6:6 39:7	including 11:5	invested 60:21
going-forward	72:3,9 75:2,3	40:24 41:4	27:18 36:16	investing 29:20
67:16	77:22,24,25	48:18,21 51:2	income 79:19	investment
good 3:2 13:5,7	84:16 86:6,7,8	51:19 52:18	increase 30:24	30:16 44:24
21:10,12 23:16	86:13	56:19 57:7	incremental	60:19 65:21,25
36:21 41:2,5	Hall's 57:11	74:10 75:10,14	67:21,23 68:2	66:6,6,8,11,13
41:23,24 78:1	59:14	75:15 77:4,13	69:2 72:16,18	66:21 67:12,19
78:2 85:6	hand 6:7 39:13	84:20,22,25	incurred 67:13	67:20 68:3,18
grab 21:17	76:1	85:5	indicates 11:4	68:23 70:3,5
grand 65:2	handed 8:14	Honorable 23:3	inexactness 8:2	70:13,16,22,22
69:11	11:3 51:6	hope 31:7	information	71:14,15 73:7
grant 31:19 34:4	handle 58:21	hypothetical	4:16,22 21:18	73:16 74:1
great 18:2	hands 23:6	15:17 44:18	40:21	investments
greater 11:17	happen 65:7	45:3 55:4	infrastructure	29:24
14:14 55:14	71:4	56:25 64:14	1:12 3:8 6:25	Iowa-American
70:23 71:16	happened 69:9	65:3,6 68:22	7:21 8:6,19	39:25
78:16	happens 23:22	71:22	12:2 17:20,24	ISRS 1:13 3:9
guess 8:15 16:6	84:2	hypothetically	18:6,13 29:20	6:24 7:2,4,14
43:3 52:4 55:3	happy 73:22	14:6 16:15	initial 82:4,5	7:16,18,20
55:16	header 40:12	82:10	initially 47:17	8:10,11,19,21
guys 62:1	heard 25:14		installation	8:24 9:1,4,15
	50:15		53:19	9:16,20 10:2,5
H	hearing 1:5 3:12	I	installed 55:4	10:7,16,19,20
H 87:1	23:19,22 78:3	identification	instance 29:11	10:21 11:5,6,8
		39:9 40:7		

IN THE MATTER OF MAWC

11:10,15,15,19 11:22 12:6,15 12:17 15:3,7 15:14,21 17:21 18:9,16,22 19:4 20:24 24:18,20,23 25:4,13,19,24 26:4,8,10,12 26:17,18 27:3 27:6,8,11,12 27:16,19,20,21 27:22 28:14,23 29:3,5,11,12 29:15,17,19 30:3,10,12,14 30:16,18,19,24 30:24 31:11,15 31:18,20,22 32:3,5,5,6,7,8 32:9,13,14,14 32:15 33:7,21 33:24 34:4,7,9 35:2,16,16,17 36:2,15,17 37:16 42:2,24 43:10 45:14 46:6 47:2,16 47:17 48:2 49:8 50:15 53:20 55:5,25 56:1,8,16,16 56:21,21,24 57:17,20 58:2 58:3,4,12,14 58:22,22 60:6 60:18,19,23 61:4 62:9 64:1 64:25 65:23 66:4 68:16,19 69:7 70:24 71:2,9 72:15 73:8 78:13,15 78:25 79:7	80:1,7,11,20 81:12,18 82:9 83:25 84:8 ISRS-eligible 29:1 34:25 36:2 53:20,25 60:5 80:6 ISRS-related 84:8 ISRSs 36:14 59:16 63:7,18 73:3 issue 7:6 27:12 57:18 59:16 68:13 84:10 issuing 52:14 item 36:2 items 10:12 28:22 29:1,3 67:13 iterated 28:16 <hr/> J <hr/> jail 31:8 January 32:2 54:22 Jeanne 25:11 39:5,14,20 86:5 Jefferson 1:7 2:4 2:8,12 Jordan 1:15 3:2 3:10 4:5,12,17 4:23 5:6 13:3 17:8,12 19:12 21:9 22:22,25 23:13 34:12 36:20 38:25 39:2,3,10,17 41:2,5,8,13,16 41:20 48:13,17 48:19 51:3,20 51:23 52:24 53:1,4 54:5,10	55:17 56:12,14 56:20 57:5,8 57:10,15 59:24 61:20 63:8,24 64:3,8 65:16 68:14 72:10 73:23 74:4,14 74:18,23 75:2 75:4,8,11,25 77:7,11,14,17 77:20,24 84:18 84:21,23 85:1 85:3,6 86:8 judge 1:15 3:2 3:11 4:5,12,17 4:23 5:6 13:3 17:8,12 19:12 21:9 22:22,25 23:3,13 34:12 36:20 38:25 39:2,3,10,17 41:2,5,8,13,16 41:20 48:13,17 48:19 51:3,20 51:23 52:24 53:1,4 54:5,10 55:17 56:12,14 56:20 57:5,8 57:10,15 59:24 61:20 63:8,24 64:3,8 65:16 68:14 72:10 73:23 74:4,14 74:18,23 75:2 75:4,8,11,25 77:7,11,14,17 77:20,24 84:18 84:21,23 85:1 85:3,6 86:8 jump 53:13 68:1 June 1:6 5:13 45:6 60:20 <hr/> K <hr/>	keep 25:25 33:6 33:6 keeping 29:19 keeps 19:24 Kenney 1:16 19:14 20:5,16 21:3,6,8 34:14 34:17,22 35:7 35:14,24 36:6 36:18 41:18 61:22,25 63:22 64:12,23 65:5 65:10 67:21 68:2,7,9,21,25 69:5,14,17,19 69:23 70:1,13 70:18 71:13,18 72:13,21,25 73:7,12,18,25 74:3,13,16 75:1 77:22 86:9 key 27:14 kind 13:16 38:5 50:13 55:15 65:20 know 12:24 13:20 15:24 16:8,11 20:23 20:23 25:24 37:25 43:6 46:7 50:21,24 52:15 54:13 55:7 58:25 59:13 68:11 80:5,10,12 82:22 knowledge 40:21 77:2 known 3:9 <hr/> L <hr/> L 2:2 76:7 Laclede 32:1	36:7 language 8:16 31:17 55:24 largish 3:21 Lastly 30:21 late 51:23 law 1:15 2:2 3:11 4:8 layman 83:6 lead 24:13 55:15 leave 5:13 leaves 7:5 leaving 24:6 30:12 left 20:7 23:15 legal 2:7 26:6 31:23 83:9 legalities 83:4 legally 82:22 legislative 7:19 7:25 12:7 28:10 legislatively-a... 28:13 lesser 55:14 let's 4:6 6:3 8:25 13:25 14:5,5,6 14:8,10,10 16:15,15 75:12 81:14 82:24,24 level 6:20 11:16 26:20 38:15 levels 33:13 44:3 liability 17:4 22:8 47:8 83:2 life 56:8,11,15 56:16 62:9 64:4,25 71:6 78:15 79:25 limit 28:11 33:17 34:1 78:11 limitation 8:18 28:5,18 52:8
--	--	--	---	---

IN THE MATTER OF MAWC

limitations 30:7	market 24:1	19:19 24:17,19	73:1,19,25	monopoly 23:8
limited 9:5 25:6	material 32:22	24:24 26:9	80:17,19 81:23	23:11,12,18,21
limits 27:24	mathematically	33:17	minus 59:21	23:25 24:1,8
33:22,25	64:23	mention 5:7	minute 52:22	24:11,16,20
line 51:15	matter 1:10 3:6	8:22 9:19 10:8	minutes 53:1	31:1,2,10
lines 51:14	12:11 20:12	mentioned 10:4	missing 31:10	33:16,18
listed 9:9	26:6 28:9	85:7	Missouri 1:2,7	month 46:19
little 12:20 15:25	31:25 32:4,6	merely 6:11	2:8,9,12 17:17	49:14 85:8
16:7 23:14	52:23 76:13	merits 3:12	17:18 18:14	months 8:21
48:21 50:17	matters 3:24	microphone	31:24 38:1	42:14 47:22
70:17 74:4	MAWC 2:5	3:20 73:24	76:10	48:7,8
LLC 1:20	25:18 31:17	middle 23:19	Missouri- 1:11	morning 3:2
look 60:15,16	MAWC's 6:22	million 7:13	Missouri-Ame...	13:5,7 21:10
67:17	Mayfield 2:7 4:2	12:1,15 20:8	3:6 4:10 6:4,16	21:12,15 36:21
looked 20:14	4:14,15 5:2	26:19 34:24	7:10,12 8:3,5	36:22 41:23,24
63:25 64:1	23:2,17 34:16	42:2,10,18,22	11:14,17 12:5	78:1,2
looking 17:1	34:19 35:4,10	43:20 44:5,10	18:18 19:1,3	move 23:13 24:3
44:17 63:14	35:20 36:4,9	44:20,22,23	19:20 20:10	77:4
66:1	36:19,22 37:3	45:7,24 46:2	24:10 25:12,22	multiple 36:13
looks 23:11	37:9,19 38:10	46:10 47:12	27:15 28:17,24	
61:23	38:24 39:2	49:1 52:15	30:11 31:3,9	<hr/> N <hr/>
lose 42:7 43:5	41:4,15 48:18	53:16,21,23,24	33:3 35:5,8	N 2:1 86:1 87:1
48:25	54:6 57:7 68:6	54:16,18,18,22	37:24 39:25	nailed 14:2
lost 3:22 28:17	68:8,11 74:10	54:23 55:6,15	42:3 43:10	name 39:19 76:6
lot 23:5,6	75:14,19 76:5	55:21,23 56:2	48:20 54:17	named 23:25
low 19:25	77:4,13 84:25	56:4,5,10,14	56:9 58:13	narrow 18:16
lower 58:25	85:5 86:12	56:15,20 58:15	77:18 84:21	natural 7:18
<hr/> M <hr/>	mean 17:1 20:11	58:18 60:7,12	Missouri-Ame...	nature 32:21
Madison 2:8,11	35:10 37:3	60:13,20,22,24	6:20,21 7:1 8:9	neat 71:11
manager 39:24	42:12 44:14	61:1,2,9,11,17	11:25 19:9	necessarily
76:11	45:18 46:18	62:1,3,6,12,13	26:2 28:23	12:23 13:21
mandate 32:12	52:2,6,10 59:6	62:21,21,22	30:22 31:7	14:24 16:12
mandated 47:24	60:14 67:18	63:2,6,12,14	43:9 47:1	37:25 71:16
manner 31:23	82:23 83:3	63:16,17 64:5	58:14 75:9	84:13
42:24	meaning 28:5	64:13,16,18,20	mitigate 13:22	necessary 8:23
mark 25:10	30:5 47:4	64:24 65:2,3	MO 2:4	need 3:24 5:4
35:10 38:21	means 56:4	65:12,12,15	moment 52:21	29:21 51:3
39:7 75:15	62:22 65:14	67:5,6 68:4,23	money 17:23	85:9,10
76:2,7,8 86:11	mechanically	69:1,8,10,12	20:9,20 35:9	neither 88:8
marked 3:1 5:1	83:10	69:21 70:4,6,9	80:13	never 20:10,19
40:6 75:16,21	mechanism 18:7	70:11,14,20,23	moneys 50:16	32:5 35:9
75:23 76:16	26:14,24 27:1	70:24 71:3,9	monitor 37:9	60:21 63:16
87:2	29:4	71:13,16,23	monopolist 24:6	65:7 69:8
	mechanisms	72:15,16,18,25	24:13	new 7:14 10:21

IN THE MATTER OF MAWC

43:2 54:24 60:17,19 66:4 67:20 68:23 69:20 73:6,7 73:16,25 81:18 81:18 nice 71:10 nod 74:7 nonrecovery 11:18,20,21,25 normal 79:15 normally 17:17 notice 20:13 42:13 nth 25:4 number 3:4 39:11 46:22 54:3 55:7,21 59:17,18 75:22 75:23 80:8,17 number's 59:12 numbers 5:4 61:3	Oh 80:20 okay 5:6 14:18 21:8,23 36:18 37:14 38:23 43:19,22 45:8 46:12,17 47:9 47:16 48:11 49:15 50:21 51:18 55:1,17 57:5,23 58:10 58:18,21 59:2 59:6,12,24 60:11 61:18 62:15,24 63:8 68:7,21 69:17 72:9,21 73:20 74:4 75:19 77:14 80:4,10 80:21 81:14 82:2,5 83:15 Oligschlaeger 25:11 35:10 74:2,11 75:15 75:22 76:2,7 86:11 87:5,6 once 42:11 55:2 55:2,7 one-year 48:3 63:10,11 OPC 48:15 52:23 53:9 54:2,5 57:8 84:19 OPC's 42:1 open 34:11 opening 6:1,4,9 17:12 22:25 25:15 28:16 35:20 38:13 51:8 operations 25:2 opinion 7:6 35:23 opponents 24:4	opportunity 11:14 order 5:19 10:23 12:14 17:12 18:7 83:11 ordered 27:19 78:22 orders 5:21 61:6 ordinary 31:13 original 19:21 out-of-pocket 70:10 79:9 outcome 88:13 outside 7:23 20:21 33:25 over/under 84:11 overall 84:6	passing 24:17 pattern 81:15 82:18 pay 18:1 paying 20:2 people 23:6 74:5 percent 6:19 15:22 16:12,17 19:16 24:22 25:13 26:5,16 26:19 29:8,18 30:14 31:21 32:12 33:25 38:6,14 43:11 45:9,10 47:4 52:8,11,12 78:5,9,10 82:19 perfect 23:17 71:7 period 9:5,17,25 10:4 27:3,7 32:23 42:21 45:22 47:20 48:1,3 50:16 50:18,19,19,20 50:25 57:13,16 57:23 58:2,3,8 58:12,23 59:3 61:4 62:4 63:10,10 78:6 periods 11:19 15:8 49:24,24 49:25 50:23 59:4 63:11,13 73:1,20 permission 51:4 permit 32:11 33:6 permits 37:5 permitted 29:25 34:6 permitting 34:6 34:9	perspective 55:19 73:9 Petition 1:11 3:6 petitions 8:25 phasing 29:21 phone 3:18 phones 3:15 pick 49:23 pit 18:19 place 29:6 47:17 60:24 84:7 placed 26:25 27:24 plan 4:24 49:7,8 49:13,15 50:7 plant 30:16 49:19 53:20 54:1,20,22,24 55:5,11 60:18 61:12,16 65:22 66:4,5 67:15 67:19 69:2,20 70:11,22,22 79:10,10,11,13 79:16,23 80:6 play 33:20 players 24:2,5 24:14,17 33:20 playing 23:4,7 please 17:15 23:2 39:12,19 59:10 76:1,6 pocket 67:5 79:8 79:15 point 27:14,17 81:17 pointed 16:21 points 31:17 position 8:9 15:19,25 18:22 19:3 20:5,7,7 22:4 27:16 30:19 34:5,24 35:12,16 38:7
O		P		
oath 39:16 74:5 74:12 76:4 objection 5:23 5:24 objections 41:2 77:8 obvious 7:19 12:7 obviously 46:18 78:3,14 occasionally 3:17 occurring 36:14 offer 6:10 40:24 Office 2:12 4:18 4:20 17:13 32:1 41:10 77:15 officer 88:4	Oh 80:20 okay 5:6 14:18 21:8,23 36:18 37:14 38:23 43:19,22 45:8 46:12,17 47:9 47:16 48:11 49:15 50:21 51:18 55:1,17 57:5,23 58:10 58:18,21 59:2 59:6,12,24 60:11 61:18 62:15,24 63:8 68:7,21 69:17 72:9,21 73:20 74:4 75:19 77:14 80:4,10 80:21 81:14 82:2,5 83:15 Oligschlaeger 25:11 35:10 74:2,11 75:15 75:22 76:2,7 86:11 87:5,6 once 42:11 55:2 55:2,7 one-year 48:3 63:10,11 OPC 48:15 52:23 53:9 54:2,5 57:8 84:19 OPC's 42:1 open 34:11 opening 6:1,4,9 17:12 22:25 25:15 28:16 35:20 38:13 51:8 operations 25:2 opinion 7:6 35:23 opponents 24:4	opportunity 11:14 order 5:19 10:23 12:14 17:12 18:7 83:11 ordered 27:19 78:22 orders 5:21 61:6 ordinary 31:13 original 19:21 out-of-pocket 70:10 79:9 outcome 88:13 outside 7:23 20:21 33:25 over/under 84:11 overall 84:6	passing 24:17 pattern 81:15 82:18 pay 18:1 paying 20:2 people 23:6 74:5 percent 6:19 15:22 16:12,17 19:16 24:22 25:13 26:5,16 26:19 29:8,18 30:14 31:21 32:12 33:25 38:6,14 43:11 45:9,10 47:4 52:8,11,12 78:5,9,10 82:19 perfect 23:17 71:7 period 9:5,17,25 10:4 27:3,7 32:23 42:21 45:22 47:20 48:1,3 50:16 50:18,19,19,20 50:25 57:13,16 57:23 58:2,3,8 58:12,23 59:3 61:4 62:4 63:10,10 78:6 periods 11:19 15:8 49:24,24 49:25 50:23 59:4 63:11,13 73:1,20 permission 51:4 permit 32:11 33:6 permits 37:5 permitted 29:25 34:6 permitting 34:6 34:9	perspective 55:19 73:9 Petition 1:11 3:6 petitions 8:25 phasing 29:21 phone 3:18 phones 3:15 pick 49:23 pit 18:19 place 29:6 47:17 60:24 84:7 placed 26:25 27:24 plan 4:24 49:7,8 49:13,15 50:7 plant 30:16 49:19 53:20 54:1,20,22,24 55:5,11 60:18 61:12,16 65:22 66:4,5 67:15 67:19 69:2,20 70:11,22,22 79:10,10,11,13 79:16,23 80:6 play 33:20 players 24:2,5 24:14,17 33:20 playing 23:4,7 please 17:15 23:2 39:12,19 59:10 76:1,6 pocket 67:5 79:8 79:15 point 27:14,17 81:17 pointed 16:21 points 31:17 position 8:9 15:19,25 18:22 19:3 20:5,7,7 22:4 27:16 30:19 34:5,24 35:12,16 38:7

IN THE MATTER OF MAWC

<p>38:11 42:1 43:8,16,17 49:1 82:12 83:20 possible 20:22 22:16 33:18 52:19 53:8 71:1 potentially 53:22 71:8 power 24:21 33:18 powers 83:7 practice 30:3 precedent 31:23 prefiled 55:20 preliminary 3:24 prepared 40:1 76:12 85:11 presumably 20:16 49:18 presumed 79:3 pretax 10:3,9,10 27:6 prevent 24:17 24:19 prevents 69:20 previous 7:3 8:23 11:20 21:25 63:13,13 previously 4:15 45:1 primary 6:18 prior 7:25 11:15 11:19,23 15:8 15:16 18:24 27:19 44:7 63:7 73:1,3,20 79:12 proactive 42:7 probably 13:23 23:5 68:24 70:16</p>	<p>problem 52:24 proceeding 6:22 10:24 26:22 28:20 37:11 40:2 PROCEEDIN... 1:4 process 8:3 22:16 produce 16:4 26:18 33:23 56:1,5,7,21 prohibits 36:8 36:10 projects 7:22 8:7 73:8 proper 33:5 properties 23:21 24:3 property 8:20 50:6 67:10 68:17 70:12 79:13,17 proposed 5:14 27:8 74:13 prospective 49:24,25 protected 24:24 26:9,14,24 29:4,19 protection 18:17 19:8 protective 33:17 prove 3:17 provide 15:15 18:7 31:14 provided 4:15 4:21 9:13 11:3 12:19 17:19 19:6 50:9,11 51:8 53:18 72:5 80:8 provides 6:17 16:24 17:25</p>	<p>18:5,9,10 providing 31:18 provision 8:17 12:19 52:6 provisions 10:19 51:7 Pubic 2:9 Public 1:1 2:7 2:12 4:18,20 17:13 18:15,21 19:2,6 28:15 32:2 41:10 54:8 76:10 77:15 purchase 79:10 purpose 21:15 37:2 purposes 40:2 pursuant 10:19 put 16:18 19:25 20:8 28:5 33:9 36:15 47:5,16 54:20,23 71:21 71:22 82:25 putting 46:5</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 30:16 qualifying 47:19 78:12 79:23 question 9:12 26:6 32:20,21 32:24,24 34:23 37:1,15 38:4 38:22 40:3 43:16 45:20 50:22 51:22 52:4 55:18 57:11 58:10 59:15 61:23 74:12 78:24 84:18 questioning 48:15 53:5</p>	<p>questions 13:2 17:9 19:12 22:22 34:11,12 38:25 40:16 41:1,12,15,16 41:18 47:9 48:12,13 53:9 54:10 60:1 61:21 63:9 72:10 74:24 76:22 77:16,19 77:20 84:17 quibble 15:25 79:14 quote 26:17 27:2</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 raise 39:12 76:1 raised 84:11 raising 23:6 ramp 53:19 rate 6:22 7:14 7:16,22,23 8:1 8:2 9:1 10:20 10:24 11:2,9 12:16,17 13:16 13:24 14:7 15:3 16:4,10 16:20 18:11 19:22 20:12,14 20:21 22:9,11 22:14,17 24:25 25:3 26:4,12 26:22 27:25 28:13,15,19 29:10,21 30:24 32:7,8 33:12 33:23 37:10 42:6,6,11,16 42:17 44:1 47:7 49:18 50:18 53:20 55:6 57:1</p>	<p>63:18,19 64:21 64:25,25 65:9 65:15,23 67:3 67:14,15 71:21 71:24 72:7 73:11 78:13,21 79:5,6,11,12 79:18 80:1,3 80:12 81:16 83:2 84:3,8 ratemaking 25:5 29:23 30:2 ratepayers 14:22,25 24:15 rates 10:21,24 11:16 17:25 20:3 25:8 29:13,14 33:13 35:25 36:3 39:24 42:6,15 43:2,23 44:3 48:5 49:23 50:11 64:20 65:14 79:22 rationale 19:16 Rcv'd 87:2 reach 52:16 55:7 64:18 read 31:22 37:3 40:13 55:19,22 83:15 reading 28:9 35:22 36:12 45:18,19 62:2 83:24 84:14 reads 3:5 27:2 ready 5:25 39:3 reality 71:10 realize 23:19 really 6:17 11:21 12:2 53:15 65:7,24 70:19 70:20 83:9,9 reason 13:9</p>
--	---	--	--	---

IN THE MATTER OF MAWC

<p>19:10 38:18 reasonable 18:16 20:1 reasons 13:10 rebuttal 39:8,11 40:3,11,13 75:22 76:13,16 76:20,23 83:16 87:4,6 receipts 16:19 44:21 45:11 receive 29:17 42:20 received 27:14 41:7 77:8,10 78:5,6 83:11 recess 53:2 recitation 6:11 recognize 10:15 recognized 23:20 recommendati... 30:25 reconcile 8:23 9:9 10:1 27:4 reconciled 59:5 reconciliation 7:2,7 8:12 9:2 9:3,6,11,19,21 10:11,13,17 11:1,11 15:1 15:13 18:24 27:1,8,13,19 31:20 32:17 36:16 44:25 46:24 58:3,6,7 69:16 71:8 72:5,23 73:10 81:8 84:4 record 19:4 20:18 41:6 53:3,5 77:6,9 85:13,15 recorded 67:10</p>	<p>recording 32:22 recourse 29:9 recover 7:21 15:20 20:10,20 25:18 27:10 28:17 30:11 35:9,15 42:3 42:22,23,25 43:10,20 44:5 47:18,21 48:6 50:16 53:22 54:17 67:1 70:6 71:8 78:13 79:15 80:16 81:19,23 82:8,19 recoverable 29:5 recovered 15:8 16:3 22:13,13 29:14 30:23 32:9 38:8 45:13,24 46:4 66:12 71:3 73:20 79:8 recoveries 17:2 17:3 55:14 recovering 15:7 recovery 7:3 8:5 9:17 10:16 11:5,7,14 12:24 15:16 16:1 17:16,24 21:24 22:7,8 22:16 26:10 27:25 28:18,22 28:25 29:3,18 29:24,24 35:3 35:17,25 37:15 37:16,18 42:2 44:24 45:21 46:14 47:3,4,7 48:1 49:1 50:5 50:5 61:15 62:23 63:6</p>	<p>71:15 73:2,14 73:14 81:18 83:1 84:11 recross 48:15,17 84:19 redirect 48:19 48:22 84:23 86:7 reduce 5:17,18 15:2 reduced 14:12 88:7 refer 8:16,25 reference 10:8 50:23 referenced 51:7 referred 21:14 38:1 referring 26:15 refers 9:2 32:6 reflect 33:13 71:14 reflected 68:4 73:2 79:3 reflects 73:1,16 refund 27:10 refunds 11:6 regard 50:24 regular 20:3 regulated 17:16 24:11 regulation 39:24 regulatory 1:15 3:10 12:16 17:1,4 19:4 20:9,18 22:7,8 30:23 31:12,20 34:7 35:8,15 47:8 83:2,18 rehearing 5:19 rein 18:7 reiterate 25:16 26:22 reiterated 38:12</p>	<p>reiterating 25:25 related 7:2 84:12,13 88:9 relates 7:9 relation 33:23 relative 88:11 relevant 9:23 relief 33:12 remedial 47:9 remediated 28:14 remember 29:22 49:3 74:16 remind 3:20 73:23 reminding 5:21 rents 24:4 31:11 rephrase 80:25 replacement 1:13 3:8 7:22 8:7 17:21,24 29:20 replacements 6:25 8:19 12:3 REPORTED 1:19 reporter 4:11,16 4:22 75:18,20 75:24 88:1,4 REPORTING 1:20 request 6:23 7:13,15 30:17 30:22,24 31:11 32:25 44:9 requested 12:12 28:23 62:25 requesting 33:7 57:19 requests 33:4 require 3:16 22:4 83:18 required 26:11</p>	<p>requirement 7:9 43:24 70:21 79:16 requiring 17:23 reset 10:20 11:7 26:12 72:15,17 79:7 resetting 29:11 response 48:23 responsibility 24:12 33:12 rest 69:8 restriction 33:8 result 11:24 16:16 28:4,4 61:5 82:9 resulted 47:3 resulting 10:2 11:18 27:5 results 32:23 return 25:3 63:8 67:11 68:17 79:12,18 revenue 6:20,24 7:9 8:11 9:19 10:16 18:9,25 19:5,8,16 25:7 25:13 26:20 27:14,20 38:15 42:8 43:24 56:7,21 58:22 58:24 59:2,16 60:18 70:21 71:9 79:16 80:21 82:20,21 revenue-auth... 82:4 revenue.59 56:6 revenues 8:24 10:2,3,9,10,25 11:5 12:1 18:22 19:23 24:22 25:2,19 25:23 26:3,12</p>
--	--	---	---	---

IN THE MATTER OF MAWC

26:18 27:5,6 27:13,17,18,22 28:18 29:5 30:14,18 31:6 33:22 37:16 56:1 78:12,14 81:12 82:9,13 83:25 review 25:6 35:5 revised 10:20 right 3:18 14:16 21:2 22:15 23:14 29:6,6 35:19 39:12 43:7 46:1 48:4 48:11 55:12 61:6,18 64:11 66:7 69:13,23 72:19 73:20 74:3 76:1 80:17 84:16 ROBERT 1:16 rolled 36:3 67:15 room 3:21 23:4 78:4 roughly 61:8 rule 6:11 7:6 11:2 16:21,24 17:20 18:14 21:13,15 36:24 37:2 47:25 83:5,17 rules 9:7 10:14 11:9 12:20,22 12:23 28:2 33:15,16,20,21 34:10 running 61:12 runs 57:20	safe 13:8 31:14 saw 20:23 saying 28:22,24 29:2 36:5,6,9 36:11 43:14 62:1,3 64:3 65:1 73:15,18 says 60:17 scenario 14:21 schedule 5:11,23 85:9 scheduled 5:16 schedules 9:1 10:20 scheduling 5:7 scope 28:12 scrutinized 25:4 scrutiny 30:3,6 second 6:22 9:23 26:24 35:17 62:25 67:6 section 9:22 10:17 51:10 83:23 see 8:16,25 16:10 25:9 33:1 51:11,15 81:2,4 seeing 6:3 77:7 seek 17:24 18:8 32:18 seen 18:19 59:13 SENIOR 1:15 separate 9:9 84:5 separately 9:22 September 45:23 46:8,14 57:21,24,25 58:4,5,5,7,13 58:23 59:7,9 60:20 sequence 41:8 service 1:1 2:7,9	12:4 31:15 39:23 43:2 49:9,14 55:5 76:11 set 11:16 16:10 16:11 18:11 21:25 33:16 42:6,15 44:3 49:23 69:7 79:7 sets 42:17 setting 24:2 seven 51:14 sheet 9:13 11:3 72:8 short 28:15 shows 41:9 significance 23:10,22 38:20 significant 6:14 silence 3:15 silencing 3:17 simple 46:3 simpleminded 59:15 63:9 simplified 59:15 simply 28:6 29:6 46:3 single 24:2 32:13 34:9 36:17 single-issue 25:5 27:25 29:23 single-rate 32:10 sit 31:9 situation 15:1,4 16:7 36:10 64:14 84:5 six 47:22 48:7,8 51:14 six-month 47:20 48:1 50:16,19 six-year-old 23:8 size 13:23	solely 11:15 son 23:8 sorry 51:22 56:18 72:13 84:24 sort 48:25 50:10 sound 3:21 sounds 55:18 spaces 23:10 speaking 3:21 14:6 speaks 37:25 special 32:25 spend 17:23 19:23 spot 14:1,3,9 57:1 72:6 Staff 2:9 4:13,15 5:11 6:16 7:14 8:4 11:20 15:18 20:6 23:1 25:6,11 25:22 27:15,15 28:21 30:17 31:5 34:3,24 38:17 41:14 43:19 47:2 48:17 52:20,23 53:9 54:2,5,6 55:13 57:5 65:19 67:25 68:12 73:18,21 73:22 75:13 80:18 84:24 Staff's 7:24 11:13 12:5,13 18:22 19:2 20:7 30:24 34:5,24 35:4 35:16,18,21 38:7,10 41:25 43:8,17 49:1 74:8 75:16,20 83:20 85:4	86:10 stage 12:25 stand 51:20 75:4 85:1 standard 30:2 32:24 start 3:14 4:7 36:25 49:11,12 65:22,22 67:18 started 6:7 49:5 63:11 starting 68:9 starts 25:21 state 1:2 33:21 39:19 76:6 80:18 stated 7:19 12:7 34:1 statement 6:4,9 22:25 25:15 28:16 36:5 51:8 statements 6:1 17:13 states 9:15 10:18 statute 7:6,18,20 8:13,22,24 9:2 9:10 10:14 12:6 15:15 17:19,25 18:5 18:9,10,16 19:6,10,17 24:18 26:8,25 28:2,3,10 29:1 29:3 30:1,4,7 31:15,18,22,23 32:3,5,14 33:10 34:8 37:20,25 43:10 47:2,25 50:23 51:13 52:2 55:25 81:7 82:1,3 83:5 statute/rule 51:7
S				
S 1:16 2:1 S.W 34:20				

IN THE MATTER OF MAWC

<p>statutes 6:8,11 7:24 8:9 9:4 17:21 55:22 statutorily-set 24:21 statutory 14:19 16:18 26:5 28:2 29:22 30:20 47:1 81:13 stay 64:21 65:14 stop 33:5 64:11 Street 2:8,11 stripes 32:15 struck 23:9 stupid 55:18 subject 33:21 submit 27:8 submitted 35:5 subsequent 32:17 subtract 59:18 subtracting 46:4 subvert 19:7 Suite 2:11 suitied 35:11 sum 71:14 summarize 33:15 surcharge 1:13 3:8 9:17 17:21 18:1,5 19:25 20:2 32:9 33:21 47:16 48:6 57:18,19 58:14,22 66:15 66:17,18,20,23 78:19,20,25 80:11,11 sure 5:8 14:23 38:21 47:11 64:2 65:19 73:24 81:14 83:23</p>	<p>surrebuttal 25:10 Swearengen 2:3 4:9 sworn 39:15 76:3 system 1:13 3:8 6:25 7:21 8:6 8:19 12:3 17:20</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 87:1 take 3:24 5:23 13:17 22:11 41:25 42:18 52:19 59:17 82:12 taken 15:24 49:19 88:5,6 88:10 takers 23:5 takes 27:15,22 42:14 talk 50:4 52:20 52:23 53:15 talked 12:21 16:25 talking 24:8 49:6,8 57:14 57:17 63:9,11 65:22,24 talks 9:24 10:12 51:16 target 82:20,21 tariff 72:8 78:22 tariffs 5:14,20 tasked 24:12 26:7 tax 68:17 taxes 8:21 50:6 67:10 70:12 79:13,18,19 telling 59:19</p>	<p>tender 40:25 term 79:14 80:7 terms 10:5 16:25 test 13:15,16 14:1,7 17:18 20:15,17 21:25 testified 39:16 76:4 testimonies 25:10 39:8 testimony 6:15 40:3,6,10,12 44:18 45:19 55:20 59:13 60:16 66:1 76:13,16,20,23 83:16 thank 4:5,12,17 4:19,23 6:6 13:1,3 17:6,7,9 17:11 19:11,15 21:8 22:20,21 22:23,24 34:11 34:15 36:18 38:23 39:1,2 39:17 41:19 48:12 51:18 54:9 59:24 61:19 70:1 72:9 74:14,23 75:1,3,4,6,11 75:25 77:16 84:17 85:16 theoretically 64:13,15 thereto 88:12 thing 21:20 45:16 83:5 things 9:9 17:2 20:3,14 49:7 50:7 81:20 think 5:3 12:22 13:21,22 14:25 15:4,4,9 16:17</p>	<p>17:2,3 23:14 23:15 47:4 49:22 50:14,21 52:21 54:15 55:6 65:18,20 65:21 68:1,13 68:18 69:23,24 74:7 82:6 83:12 84:4 third 67:7 71:9 thought 20:25 57:2 thousand 45:23 three 6:17,25 9:9 10:12 13:24 33:8 45:5 51:13 52:8,13,17 53:14,23 54:18 54:23 55:9 56:23 60:9,14 63:13,15 64:4 65:8 66:9,12 70:6,15 79:4 three-year 47:13 52:5 56:8,11 62:3 63:10,21 63:22 78:6 79:20 Threlkeld 1:19 88:3,20 threw 50:17 thwart 7:25 TIGER 1:20 time 5:18 19:22 20:12 23:9 27:18 29:7,12 29:17,21 36:14 40:10 42:21 43:1,6 48:1 78:6 timely 7:20 8:5 times 32:7 timing 12:20</p>	<p>21:4,7 Tinsley 25:11 39:6,12,14,20 41:1 54:14 86:5 87:3,4 Tinsley's 39:7 66:1 tipping 19:8 today 13:18 40:17 44:9 49:9 tool 25:5 28:14 total 25:23 53:24 55:6 60:4,9,13 62:7 62:8 63:18 65:2 69:11 70:2 71:14 80:5 touch 30:21 track 21:24 37:5 65:20 tracked 11:8 tracker 16:18 47:6 82:25 transcript 1:4 85:10,10 treat 11:11 27:12 treated 9:21 treatment 31:13 32:25 80:2 trend 44:16 true 40:20 77:1 true-up 45:22 try 18:8,12 turn 3:16 31:9 54:2 67:25 turned 47:2 73:24 twenty 70:15 twenty-five 46:5 twice 48:2 two 5:15,16 9:5</p>
--	--	--	---	---

IN THE MATTER OF MAWC

<p>20:3 23:20 26:9 31:10 45:22 51:13 53:23 55:8 56:23 61:3,4,5 61:5 62:20,25 63:18 66:9,12 66:12 72:1 79:4 81:3 Tying 31:1 type 14:7 81:2 typewriting 88:7</p> <hr/> <p style="text-align: center;">U</p> <p>ultimate 15:3 24:5 ultimately 10:4 35:18 53:24 67:2 Um-hum 21:22 59:22 understand 3:23 4:24 36:4 57:20 69:24 75:20 78:10,24 81:14 understanding 15:23 19:15,18 40:5 43:7,12 43:17 44:21 68:18 75:17 76:15 78:9,18 unit 76:11 unmuted 3:3 unnecessary 28:4 unreasonable 28:4 unreasonably 19:9 unrecovered 11:23 12:15 20:7 upper 27:24</p>	<p>33:22 usage 8:4 11:16 16:9 38:4 43:25 44:2,3 58:25 81:16 82:5,11,18 use 3:20 9:19 55:24 73:24 useful 3:17 61:13 uses 11:20 utilities 17:19,23 23:20 24:19 29:19 32:18,25 utility 7:20 17:17,25 18:2 26:10 29:8,9 29:17 31:21 32:17 33:6,11 33:16,18 34:9 78:12 utility's 29:13 utilize 24:20</p> <hr/> <p style="text-align: center;">V</p> <p>value 42:17 variables 28:11 variation 38:3 verbalization 74:7 verify 18:12 version 33:16 versus 32:1 38:19 42:7 view 15:6 19:21 violate 32:12 34:8 Volume 1:8 volumetric 71:21</p> <hr/> <p style="text-align: center;">W</p> <p>wait 65:8 waive 4:24</p>	<p>want 5:7,8 6:7 20:17 28:21 30:21 68:8 70:19 wanted 68:1 wants 28:17 wasn't 14:13 73:2 83:8 water 1:11 3:7 4:10 6:4,16 9:25 10:18,22 23:23 24:10 26:20,21 27:4 38:14 39:23 way 5:21 7:22 18:16 28:3 35:21 59:16 62:5,16 72:18 ways 28:6 we'll 4:7 we're 3:11 13:10 16:2,2 17:1 23:15 35:24 39:3 48:2 49:8 52:13,14 54:4 57:12,13,17,19 63:4,5,16 64:2 65:20,23 we've 26:15 45:24 46:24 57:2 59:4 60:8 72:22 welcome 34:16 36:19 38:24 went 43:1 58:4 Western 7:17 31:24 32:3 34:18,21 35:23 36:7,12 win 34:10 witness 38:17 51:2,4,5,7 53:6 57:14 63:15,25 64:7,10,17</p>	<p>65:4,6,11 70:2 72:20 74:8,18 74:22 75:6,7 77:12 85:2 witnesses 4:25 25:10 WO-2012-0401 62:17 WO-2012-0472 69:6 WO-2013-0466 62:18 WO-2015-0211 1:12 3:4 wondering 23:18 words 8:1 16:1 38:19 work 83:11 works 23:23 worth 61:11 wouldn't 13:18 42:9,23,25 44:4 52:21 69:1 72:7 73:4 woven 29:13 written 19:17 wrong 43:22,23 53:14</p> <hr/> <p style="text-align: center;">X</p> <p>X 86:1 87:1,1</p> <hr/> <p style="text-align: center;">Y</p> <p>Y 1:17 yeah 34:14 43:6 58:3 60:2 63:15 65:6,18 66:17 68:11,24 69:18 70:7 73:4 81:22 year 13:15,16 14:1,7 17:18 20:15,17 21:25</p>	<p>42:21 47:19 48:9,10 50:19 52:13 53:21,23 53:23,23 54:1 54:18 55:4,7 56:4,5,15,22 56:23,23 57:12 58:1,11 60:12 60:22,23,25 62:10,11,12,13 63:17 64:6,18 64:20 65:8,13 65:15 66:9,9,9 66:11,12,12,20 67:2,6,7,7,11 67:12,14 68:23 69:8,21 70:5 71:1,2,4,4,4,10 71:24 78:16,20 78:25 79:3 80:1 81:4 yearly 15:14 67:1 69:16 years 13:24 29:16 33:8 42:23 52:8,13 52:17 54:18,23 55:8 56:16 60:9 63:13,15 64:4 65:9 70:6 70:15 71:11 72:1 79:4 81:3</p> <hr/> <p style="text-align: center;">Z</p> <p>zero 10:21 11:1 11:7 21:25 26:13 29:11 67:2 79:7</p> <hr/> <p style="text-align: center;">0</p> <p>0055 72:17 01 69:7 0401 66:4 0406 72:15</p>
---	--	--	---	--

IN THE MATTER OF MAWC

<u>1</u>				<u>9</u>
1 1:8 3:1 26:19	87:4	25,892,662 6:19	43:1 11:4 21:14	9 60:24 61:1,2
39:8,10 40:6	2.9 62:25 72:18	25:17,19,25	36:24 40:12	62:13,21 69:5
40:12,17,25	20 42:21,23	26:23 37:22	61:8,11 75:17	972 60:7
41:7 45:6 87:3	20-year 79:24	25.6 80:19	75:23 76:17	
1,665,202 7:2	200 2:8,11 24:18	25.8 46:2 47:12	77:5,10 87:6	
1,919,991 6:23	2003 29:16	81:23	4.1 63:1	
1.6 12:1,15 20:8	2010 44:1	25.9 44:10	41 86:6 87:3,4	
34:24 35:18	2012 45:23 58:5	2512 69:5	417 34:20	
42:2,10,18,22	2014 32:2 34:20	253,000 61:14	456 2:4	
43:20 44:5	45:23 46:8,14	254,789 7:15	48 86:7	
45:24 46:10	59:7,9	30:13,15,18		
49:1 63:6 73:1	2015 1:6 45:6	34:5	<u>5</u>	
73:2,9,19	58:13,23	25th 58:5	5.8 60:21 67:19	
1.9 6:23 7:13	210 45:7		72:16	
57:19 63:5	210,000 44:24	<u>3</u>	50 70:11	
72:25 73:5,16	23 59:21 60:7,13	3 1:6 44:22,23	51 86:7	
73:19,25	80:17	45:7 75:16,22	57 86:8	
1/20th 79:25	23,972,670	76:17 77:5,10	573.635.7166	
10 6:19 15:22	46:16 59:11	3.2 44:20	2:5	
16:12,17 19:16	240-2.650(17)	3.7 60:20 61:14	573.751.4227	
24:22 25:13	83:17	61:17 66:11	2:9	
26:5,16,19	240-3.650(17)	67:1,5,6,8,18	<u>6</u>	
29:8,18 30:14	11:4 21:14	68:4 72:15	6 44:17	
31:21 32:12	36:25	3.736 66:10	60 86:8	
33:25 38:6,14	243.650(17)	3.736,587 66:3	61 86:9	
42:21,23 43:11	21:21	312 2:3	650 2:11	
45:9,10 47:4	25 53:16,21,22	39 86:5,6	65101 2:8	
52:8,11,12	54:15,18,23	393.1003 30:20	65102 2:12	
78:4,9,10	55:6,14,21,23	393.1003(1) 8:15	65102-0456 2:4	
82:19	56:2,4,5,10,14	26:15 51:11		
11 42:14	56:15,20 58:15	393.1006(2)	<u>7</u>	
12 8:21 29:16	58:15 59:21	31:18	7 60:15 65:25	
12-month 9:5,25	60:12,22 62:1	393.1006(5)(2)	729 69:10	
27:3 61:4	62:3,6,12,21	27:2	75 53:24 54:18	
12th 5:12 85:8	62:22 63:2,12	393.1006.5(1)	54:22 64:13,15	
1382 88:4	63:14,16,17	9:14	65:2,11 69:11	
15 42:21,23 56:6	64:5,18,20,24	393.1006.5(2)	70:6,14 71:8	
17 5:13	65:2,12,14	9:22	76 86:11,12	
1933 23:20	68:23 69:1,7	393.1006.6(1)	77 86:13 87:5,6	
	69:10,21 70:4	10:17		
<u>2</u>	70:9,20,23,23	3d 34:20	<u>8</u>	
2 39:8,11 40:6	71:3,13,16,23		8 52:15	
40:17,25 41:7	25,637,873	<u>4</u>	815 34:20	
	30:11			