

In the Matter of:

PETITION OF MISSOURI-AMERICAN WATER COMPANY

WO-2019-0184 VOL. II

May 17, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

May 17, 2019

Jefferson City, Missouri

Volume 2

In The Matter of Petition of)
Missouri-American Water Company) File No. WO-2019-0184
For Approval To Establish An) Tariff No. YW-2019-0160
Infrastructure System Replacement)
Surcharge)

CHARLES HATCHER, Presiding
REGULATORY LAW JUDGE
DANIEL Y. HALL,
COMMISSIONER

REPORTED BY:
Lisa M. Banks, CCR No. 1081
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1 JUDGE HATCHER: Good morning. Today is May
2 17th, 2019. The Commission has set this time for an evidentiary
3 hearing in the matter of the petition of Missouri-American Water
4 Company for approval to change an infrastructure system
5 replacement surcharge. This is File Number WO-2019-0184 and
6 Tariff Number YW-2019-0160. My name is Charles Hatcher and I am
7 the regulatory law judge presiding over this hearing.

8 Let's go ahead and counsel for the parties make
9 their entries of appearance. Missouri-American Water company,
10 please.

11 MR. COOPER: Thank you, Your Honor. Dean L.
12 Cooper and William R. England, III from the law firm of Brydon,
13 Swarengen and England, PC appearing on behalf of
14 Missouri-American Water Company.

15 JUDGE HATCHER: Thank you. And commission
16 Staff?

17 MR. JOHNSON: Thank you, Judge. Mark Johnson
18 appearing on behalf of the staff of the Missouri Public Service
19 Commission.

20 JUDGE HATCHER: Thank you. And Ms. Shemwell?

21 MS. SHEMWELL: Good morning and thank you, Judge
22 Hatcher. Lera Shemwell representing the Office of the Public
23 Counsel and the public. Thank you.

24 JUDGE HATCHER: Thank you all. A quick remember
25 to everyone, please silence all cell phone and mobile devices.

1 I do plan to continue until the noon hour and if
2 we are not done, I will then inquire of the parties and
3 commissioners to see what we plan to do at that point in time,
4 either continue through lunch or take a break.

5 Do the parties have any preliminary matters to
6 address? I don't see anyone. I do have one on confidential
7 matters. The Commission does its best to protect any papers or
8 evidence introduced as confidential, but that responsibility is
9 ultimately that of the party wishing to protect the material.
10 Comments regarding confidentiality of a particular issue being
11 discussed or any piece of testimony or evidence are welcome at
12 anytime.

13 As far as the order of opening, witnesses, and
14 cross-examination, we will follow the order filed by the parties
15 and their joint list of issues and witnesses. Let's go ahead
16 and begin the opening statements of Missouri-American Water
17 Company. Mr. Cooper, please proceed.

18 MR. COOPER: Thank you, Your Honor.

19 Good morning. This hearing arises from
20 Missouri-American Water Company's application and petition to
21 change its infrastructure system replacement surcharge that was
22 filed on February 20th of 2019. The proposed change would be to
23 recognize eligible infrastructure systems replacements made
24 between October 1st of 2018 and March 31st of 2019.

25 MAWC's position in this case as to the issue at

1 hand is that the accelerated deferred income taxes balance
2 should be reduced and the rate base increased reflecting the
3 inclusion of net operating loss associated with the eligible
4 infrastructure system replacements.

5 Now, as we all know this is an issue that the
6 Commission looked at not too long ago in Case Number
7 WO-2018-0373. We are back again and I'll kind of explain why,
8 but I guess first and most importantly MAWC hopes to better
9 explain why it believes that net operating loss is associated
10 with the ISRS plant in question and should be reflected in this
11 ISRS calculation. But beyond that, as you will probably recall
12 also Missouri-American was concerned that the Internal Revenue
13 Service would ultimately find there to be normalization
14 violation as a result of the Commission's decision. MAWC
15 continues to believe that's a real possibility in this case.

16 If a normalization violation is found to exist
17 we are told by the tax professionals that the consequence of
18 such a violation is the loss of the accelerated depreciation for
19 the company on a going forward basis. We're further told that
20 the only --

21 COMMISSIONER HALL: Question.

22 MR. COOPER: Yes, Commissioner.

23 COMMISSIONER HALL: So if you are correct that
24 there is a normalization violation, is that a reason for our
25 decision to be reversible error?

1 MR. COOPER: Well, we certainly will argue that,
2 but I think it is also possible that they could be two different
3 things. I mean -- one of the things I'm going to say here is
4 that I think the worst result for everybody in the room is if we
5 end up in a situation where a normalization violation is
6 determined to exist by the IRS and because of the posture of the
7 cases there's no way to go back and do a cure. And I think in
8 that situation everybody loses. The company loses. The
9 customers lose.

10 COMMISSIONER HALL: Yeah. I'm just trying to
11 understand if -- what the relationship is between a
12 normalization violation and whether or not our prior decision is
13 reversible. I mean would you make the argument that it is
14 therefore unreasonable and should be reversed on that basis? Is
15 that your argument?

16 MR. COOPER: Unreasonable, perhaps unlawful.

17 COMMISSIONER HALL: Why would it be unlawful?

18 MR. COOPER: Well, the argument would be that --
19 well, that the statute directs that accumulated deferred income
20 taxes be included in the ISRS calculation, that if -- favor to
21 include the NOL is a normalization violation. I think it links
22 then back to accumulated deferred income taxes as the asset that
23 should have been used to offset the liability.

24 COMMISSIONER HALL: And let me ask you this: I
25 assume that it is the Company's position that you have to

1 continue to litigate this issue and that might help you avoid
2 loss of -- loss of the accelerated depreciation option should
3 that determination be made that there's a normalization
4 violation; is that correct?

5 MR. COOPER: Absolutely. Yes.

6 COMMISSIONER HALL: So why could you not have
7 settled this case by agreeing with Staff on the amounts with the
8 contingency that if there was a reversal by the Western District
9 that there would be a modification to the ISRS amounts going
10 forward to make you whole?

11 MR. COOPER: In concept I think we would have.
12 It certainly would have been interested in such a thing. In
13 practice I think that becomes a little tough because I am afraid
14 that -- not to go too far but, certainly we looked at -- I think
15 it was a Spire case where there was a case up on appeal somewhat
16 similarly and a case before the Commission. It was avoided. I
17 think the second hearing was avoided at the commission level in
18 a similar fashion to what you are describing. Our problem is we
19 are flipped here. In the Spire case the Commission had made its
20 order based upon the higher -- if my memory -- sort of the
21 higher revenue requirements. So as I understood the agreement
22 it was well, depending on the result of the Court of Appeals, we
23 might have to refund some of that existing revenue requirement
24 that was be requested from the customers. We are sort of
25 flipped here at the situation.

1 We would have to be able to say that we're going
2 to be able to go back and essentially increase that revenue
3 requirement after the fact. I think that presents at least a
4 different situation. Whether it was -- and it was concerning to
5 us as to whether that could be done.

6 COMMISSIONER HALL: Okay. Thank you.

7 MR. COOPER: So moving on we are -- sort of in
8 the background of the discussion we just had, certainly there is
9 a private letter ruling process that is underway.

10 Unfortunately, it's sort of a long process and a very technical
11 process that is pursued by the tax professionals. But just to
12 catch you up on where we are with that -- and I believe this is
13 in Mr. Wilde's direct testimony. In December of 2018 and
14 January 2019 the presubmission version of the private letter
15 ruling request was drafted, presubmission conference with the
16 IRS was scheduled. Unfortunately, that was also the time frame
17 of the government shutdown, which set some of that back in time.

18 On February 1st -- well, also during the time
19 period the formal notice alerting the IRS of the potential
20 violation was prepared. That notice then was sent to the IRS on
21 February 1st after the shutdown had completed. March 19,
22 American Water representatives on behalf of MAWC were able to
23 participate in a prefiling conference with the IRS with regard
24 to the previous letter ruling matter.

25 April 16, Missouri-American provided the

1 commission staff with its draft private letter ruling request
2 for review and comment. This is a required -- this interaction
3 with the Commission is a required step as I understand it before
4 MAWC may file the private letter ruling request.

5 May 1st, the Staff provided its comments in a
6 form of an attachment. The Staff has been very good in being
7 responsive in this process. Further exchanges have taken place
8 as a result of this feedback and I think we are getting close,
9 but we still haven't gotten to the point where there is a final
10 review by the Company and Staff that would allow the Company to
11 file the private letter ruling. We would expect that to happen
12 within a few days.

13 The request will ultimately require the payment
14 or a \$30,000 application fee to the IRS. And it is anticipated
15 that it will take up to six months for the IRS to issue its
16 decision after that has been filed.

17 As was alluded to before, we think the statutory
18 language that is irrelevant that is for review for the
19 Commission here is Section 393.1000(1)(a), which defines the
20 appropriate pretax revenues. It specifically states that net
21 original cost, the eligible infrastructure system replacements
22 should include recognition of accumulated deferred income taxes
23 and accumulated depreciation associated with the eligible
24 infrastructure system replacements. We certainly believe that
25 accumulated deferred income taxes means both the liability and

1 the asset associated with those.

2 This gets a little small on the screen, so
3 hopefully you have the document in front of you.

4 COMMISSIONER HALL: Let me ask you: What do you
5 believe the word associated means there?

6 MR. COOPER: Well, in this case we believe that
7 it means directly related to the ISRS investments that are
8 before you. One of the things that I'll mention here in a few
9 minutes is that Mr. LaGrand's schedule provides the calculation
10 of both the liability and the asset. And that calculation is
11 specific to the plant that is before you. We think it is
12 associated.

13 As a bit of a reminder Congress enacted
14 accelerated depreciation, things such to include bonus, repairs,
15 and others to stimulate investment in the economy. And this
16 accumulated deferred income taxes or ADIT as it is referred to
17 commonly, arises from differences in the methods of computing
18 taxable income and computing income for book and ratemaking
19 purposes.

20 In ratemaking the main component of ADIT arises
21 from differences in how a utility's assets are depreciated for
22 ratemaking purposes, being the straight-line method versus how
23 they are depreciated for federal income tax purposes, which is
24 the accelerated method.

25 The same amount of taxes eventually must be paid

1 using either accelerated or straight-line depreciation as long
2 as the tax rate is unchanged. However, the early period tax
3 reductions provide companies that use accelerated depreciation
4 with what amounts to an interest-free loan equal to the amount
5 of their deferred taxes. In order that the utility customers do
6 not pay a rate of return on an interest-free loan, the utility's
7 rate base is reduced by an amount equal to the utility's ADIT
8 liability or its deferred liability.

9 However, when bonus depreciation and other tax
10 deductions grow so large as to push the Company's taxable income
11 into the negative, the available tax deduction cannot offset any
12 tax liability and no free cash or interest-free loan is
13 generated.

14 In that circumstance, the company must report an
15 offsetting deferred tax asset or net operating loss in this
16 case. The net operating loss offsets the ADIT liabilities and
17 therefore the NOL has the effect of increasing rate base, which
18 is what we are asking the Commission to do in this case.

19 COMMISSIONER HALL: So do you believe that that
20 net operating loss also has to be directly associated to that
21 infrastructure system and replacement?

22 MR. COOPER: We do.

23 COMMISSIONER HALL: So in this case how do you
24 show that -- well, I'll wait for your witness on that one.

25 MR. COOPER: Yeah. And again, I think that

1 comes back to Mr. LaGrand's schedule that you can see that the
2 calculations is made based upon the facts of the pending ISRS.

3 The Staff, of course, has argued that the
4 deferred tax asset reflected by MAWC is hypothetical and not
5 directly attributable to the ISRS plant at issue. First, we
6 would say that the calculation of the deferred asset is no more
7 hypothetical than the deferred tax liability, the impact of the
8 accelerated depreciation that Staff and OPC both reflect in the
9 ISRS calculation. We say that because the accelerated
10 depreciation is also a tax return adjustment, which is one of
11 the criticisms of the NOL.

12 And no tax return yet has been filed that covers
13 this time frame in regard to the accelerated depreciation,
14 another criticism of the NOL that we perceived in the case.

15 Second, we would say that there is necessarily
16 and NOL resulting from the ISRS plant in this case. The impact
17 is calculated in a similar fashion to the deferred tax liability
18 and is based on book and tax deductions associated with ISRS
19 plant.

20 There is a NOL because there are insufficient
21 ISRS revenues to cover ISRS costs. Failure to recognize this
22 insufficiency and reflect the NOL essentially assumes the
23 existence of an interest-free loan that does not exist, in fact,
24 for an amount MAWC must still fund with debt inequity. The
25 calculation as we mentioned before is shown in Schedule BWL-2 is

1 the specific in Mr. LaGrand's direct.

2 Moreover, as we have mentioned before, we still
3 believe that a failure to include the deferred tax asset
4 associated with the eligible infrastructure system replacements
5 is inconsistent with a normalized method of accounting because
6 it assumes this interest-free loan does not exist and such is
7 inconsistent with the tax normalization rules.

8 It also impacts a consent agreement MAWC entered
9 into in order to allow the utilization of the repairs deduction
10 method. A finding of course by the IRS that the Company
11 violated the tax normalization rules or the terms of the consent
12 agreement could cause the loss of significant tax benefits
13 benefiting customers. Specifically, MAWC could lose its ability
14 to claim accelerated tax depreciation deductions and tax repair
15 deductions, both of which would serve to increase the rate base
16 upon which MAWC's rates are set in the future and therefore harm
17 customers.

18 So ultimately to avoid the situation MAWC
19 requests that the Staff's calculation of the rate base be
20 increased by \$8,764,652 and that correspondingly its revenue
21 requirement be increased by \$827,383 to reflect the inclusion of
22 the net operating loss associated with the eligible
23 infrastructure system replacement.

24 MAWC will have two witnesses today. We will
25 first call Mr. John Wilde who is a tax professional with over 20

1 years of tax and accounting experience serving multistate
2 utilities. We will also present the testimony of Mr. Brian
3 LaGrand. Mr. LaGrand as we stated will provide the background
4 information concerning MAWC ISRS filing and calculations.

5 JUDGE HATCHER: Thank you, Mr. Cooper.

6 Mr. Johnson for Commission Staff?

7 MR. JOHNSON: Thank you, Judge. Good morning
8 Commissioner, Judge. May it please the Commission.

9 My name is Mark Johnson and I'm here
10 representing the Staff commission today. And this morning as
11 Mr. Cooper explained the Commission is presented with the
12 identical issue that was litigated a little more than six months
13 ago in Case Number WO-2018-0373, which was Missouri-American's
14 last ISRS case.

15 Specifically, that issue is whether the
16 accumulated deferred income tax balance recognized in
17 Missouri-American's ISRS rate base should be reduced to reflect
18 an imputed net operating loss. Now in the last ISRS case the
19 Commission found that because Missouri-American was expected to
20 have taxable income in 2018 it was reasonable to conclude that
21 Missouri-American was not generating an NOL during the ISRS
22 period at issue.

23 The Commission further concluded that because
24 there was no evidence of an NOL being generated during that ISRS
25 period it would be appropriate to reduce Missouri-American's

1 ADIT to reflect an NOL that does not exist.

2 In the case before you today the Commission
3 should come to the same conclusion. Since Missouri-America's
4 last ISRS case the Company's net operating loss carryforward
5 balance has continued to decrease on an overall basis and is
6 expected to continue to do so over the course of 2019. In fact,
7 the balance has been consistently decreasing at a significant
8 rate since January 1, 2018, which was when the Tax Cuts and Jobs
9 Act went into affect.

10 COMMISSIONER HALL: I'm sorry. What entity did
11 you say had the lower -- lowering NOL? Was it Missouri-American
12 or was it American Water Works.

13 MR. JOHNSON: It's both. American Water Works
14 on total. Their net operating loss carryforward amount is
15 decreasing. And Missouri-American's net operating loss --

16 COMMISSIONER HALL: Which -- is that just a
17 percentage of -- or is it a totally separate calculation?

18 MR. JOHNSON: I think that would be more
19 appropriate to ask the Company. My understanding is that there
20 is essentially an allocation of what loss is associated with
21 which subsidiary entity.

22 COMMISSIONER HALL: Okay. Thank you.

23 MR. JOHNSON: Staff believes this continual
24 decrease is sufficient evidence to conclude that
25 Missouri-American has not generated any new net operating losses

1 during the ISRS period relevant to this proceeding. And Staff
2 continues to believe that it would be inappropriate to impute an
3 NOL offset to ADIT when no NOL is in fact being generated by the
4 Company on an overall basis. In fact, if you were to look at
5 the Company's books for 2018 and 2019 Missouri-American's not
6 actually recorded any NOL deferred tax assets.

7 Any amount of NOL in this case would be a
8 hypothetical -- excuse me -- would be a hypothetical amount that
9 is calculated solely for the purpose of this ISRS proceeding.

10 Now, Missouri-American has asserted that this
11 hypothetical amount should be assumed for this proceeding in
12 order to reflect a delay in the rate at which prior accumulated
13 net operating loss carryforward amounts can be used to offset
14 future taxable income. They claim that this is necessary in
15 order to comply with the IRS tax normalization requirements.

16 Staff disagrees. It is Staff's position that if
17 no new NOL was generated by Missouri-American in this ISRS
18 period then no amount of new generated -- then there is not new
19 amount of generated NOL to assign to the ISRS process for
20 ratemaking process.

21 For several years prior to 2018
22 Missouri-American did generate an amount of new net operating
23 losses largely associated with its use of bonus depreciation
24 deductions. However, with the passage of the Tax Cuts and Jobs
25 Act that was effective January 1, 2018, utilities have lost the

1 ability to claim this deduction and as I stated earlier
2 Missouri-American's NOLC balances have been significantly
3 decreasing ever since.

4 While these amounts have decreased
5 significantly, Missouri-American does still carry an NOLC amount
6 that it can use as a deduction on its federal tax returns.
7 However, Missouri-American's last general rate case, which was
8 WR-2017-0285, utilized a true-up cutoff date of December 31,
9 2017, it's reasonable to assume that a balance of an NOL
10 deferred tax asset booked prior to 2018 is already reflected in
11 Missouri-American's current base rates as an offset to its ADIT.

12 Now, that case was resolved by stipulation and
13 agreement, which was filed on March 1st, 2018 and under the
14 terms of that agreement no further rate treatment of ISRS
15 eligible costs, which includes NOL amounts, incurred prior to
16 2018 is allowed to be included in subsequent ISRS proceedings.

17 Also while tax normalization requirements
18 contained within the ISRS code do state that the existence of
19 NOLs can be relevant consideration in assessing whether a
20 utility is in compliance with the rules, the code specifies that
21 NOLs may be relevant for that purpose in two specific instances.
22 First, when a utility is unable to reflect all of its available
23 accelerated depreciated tax deductions on its tax returns during
24 a rate case period thus creating a new NOL. And second, when a
25 utility's balance of an already existing NOL deferred tax asset

1 increases due to the utility's continuing inability to reflect
 2 all available tax deductions in a rate case period. Neither
 3 situation applies to Missouri-American in this ISRS period or in
 4 fact, in it's last ISRS period.

5 Further, Staff is unaware of any provision of
 6 the IRS code or any IRS private letter ruling that supports
 7 Missouri-American's position in this case. In fact, the PLRs
 8 identified by Missouri-American in its testimony that it
 9 contends support its position are the very same PLRs that it
 10 cited in its last ISRS case. The Commission subscribed no
 11 weight to those PLRs then and it should subscribe no weight to
 12 them now.

13 Staff is of the opinion that the methodology
 14 proposed by Missouri-American to calculate this imputed NOL is
 15 improper. Its use would create an NOL amount in every instance
 16 regardless of whether or not a utility is actually generating
 17 new NOL amounts. Staff believes this method is inconsistent
 18 with the intent and the theory behind the IRS code tax
 19 normalization requirements.

20 Also, adoption of Missouri-American's NOL
 21 proposal in this case would deny a rate base reduction for
 22 capital provided by utility customers in the form of deferred
 23 taxes. A result squarely inconsistent with proper ratemaking
 24 principles and one that is in no way mandated by the IRS code.

25 Finally, Staff's proposed treatment of ADIT in

1 this case is reasonable. It will not pass on the tax benefits
2 of accelerated depreciation associated with ISRS plant additions
3 in a manner that would violate IRS code and it will confer to
4 Missouri-American the benefit of the full amount of the
5 accelerated depreciation tax deductions available to it.

6 Therefore it is Staff's position that the
7 Commission should approve its recommended ISRS surcharge
8 revenues in incremental pretax revenue amount of \$8,878,845 and
9 it should approve the rates recommended by Staff in its direct
10 testimony.

11 I have with me today Staff witnesses Karen Lyons
12 and Mark Oligschlaeger, both of whom are expert regulatory
13 auditors who will provide testimony relating to the net
14 operating loss issue. I also have with me Staff witness Matthew
15 Barnes who will provide expert testimony on Staff's recommended
16 rate design. Each of them will be happy to answer any questions
17 you may have. Thank you.

18 JUDGE HATCHER: Thank you, Mr. Johnson.

19 And Ms. Shemwell, if you'd come on up.

20 Did you have questions?

21 COMMISSIONER HALL: Yes, I do.

22 JUDGE HATCHER: All right. Go ahead.

23 COMMISSIONER HALL: If we were to determine that
24 the IRS normalization procedures required inclusion of the NOLs
25 as requested by the Company, would Staff recommend to us that we

1 modify our calculation accordingly?

2 MR. JOHNSON: If the Commission determined that
3 there would be a tax normalization violation, I think Staff
4 would recommend that calculation.

5 COMMISSIONER HALL: Okay. Thank you.

6 JUDGE HATCHER: Thank you, Mr. Johnson.

7 Ms. Shemwell, please.

8 MS. SHEMWELL: Thank you.

9 COMMISSIONER HALL: Before you get started,
10 could I just ask you that exact same question. Would OPC also
11 recommend that the Company calculate the ISRS as requested by
12 the Company if we were to determine that there was normalization
13 violation if we did not?

14 MS. SHEMWELL: Public Counsel strongly
15 recommends that the Commission allow the IRS to interpret its
16 own rules and the Company is on a path to ask the IRS to do that
17 and so the Commission should not get out in front of the IRS
18 would be our recommendation.

19 COMMISSIONER HALL: What if we got a private
20 letter ruling consistent with the Company's position?

21 MS. SHEMWELL: Then I believe the Commission
22 should accept the IRS's recommendation or its decision.

23 COMMISSIONER HALL: And set the ISRS
24 accordingly?

25 MS. SHEMWELL: Well, I don't see any reason the

1 Commission would violate or had suggest the Company violate and
2 IRS regulation. Am I not answering your question?

3 COMMISSIONER HALL: Nope. You've got it. Thank
4 you.

5 MS. SHEMWELL: Good morning. May it please the
6 Commission. My name is Lera Shemwell. I represent the Office
7 of the Public Counsel. As Staff noted the Commission correctly
8 decided these exact same issues and WO-2018-0373. This report
9 and order is currently before the Western District Court of
10 Appeals and we believe that the Western District will affirm the
11 Commission's decision.

12 Notably this is not a general rate case, but an
13 exception to the general rate case. It is a statutory
14 exception. It is single-issue ratemaking. While MAWC or
15 Missouri-American has an NOL carryover that they describe as an
16 NOLC from prior periods, that NOL cannot apply to the current
17 ISRS because it has no relationship to the current ISRS. It was
18 not generated during this ISRS period. Importantly, the Company
19 has failed --

20 COMMISSIONER HALL: So then you make the
21 argument that it's not associated?

22 MS. SHEMWELL: Absolutely. Yes, sir.

23 The Company has failed to present any evidence
24 that the Commission erred in its last decision and has failed to
25 meet its burden of proof that the claimed NOL has any

1 relationship or association to the infrastructure it claims to
2 be ISRS eligible in this case. The proof that Mr. Wilde has
3 presented is it's -- it's AWW's American Water Works
4 consolidated income tax from 2017. Mr. Wilde has given you a
5 single page out of the consolidated income taxes. All of the
6 net operating loss for American Water Works is gathered and then
7 it is distributed among the various utilities that it operates.
8 When it is distributed from a general net operating loss for
9 American Water, it can't be specific to any particular
10 infrastructure in Missouri.

11 Our witness is Mr. John Riley, who is a CPA and
12 he will explain that MAWC did not generate any NOL in 2018 or
13 2000 or 2019. He will confirm that the NOL was included in
14 Missouri-American's last rate case and that this could result in
15 a double collection of this -- these funds. That's all I have.
16 Thank you.

17 JUDGE HATCHER: Thank you, Ms. Shemwell.

18 Now what I would like to do is turn to our
19 witnesses and I believe the order I have is the first witness is
20 from Missouri-American.

21 Mr. Cooper, if you would please call your first
22 witness.

23 MR. ENGLAND: Your Honor, this is Trip England.
24 I'm going to be handling the witnesses following the order in
25 your -- or at least the schedule of witnesses and issues. We'll

1 call Mr. Wilde to the witness stand please.

2 JUDGE HATCHER: Thank you. Please come on up,
3 Mr. Wilde.

4 (Witness sworn.)

5 JUDGE HATCHER: Thank you. Please be seated.
6 Go ahead Mr. England.

7 MR. ENGLAND: Thank you.

8 JOHN WILDE having been first duly sworn testified as follows:

9 DIRECT EXAMINATION BY MR. ENGLAND:

10 Q. Will you please state your name for the record,
11 please?

12 A. John R. Wilde.

13 Q. And Mr. Wilde by whom are you employed and in
14 what capacity?

15 A. American Water Works Services Company and the
16 capacity of vice president of tax.

17 Q. And are you appearing here today for the purpose
18 of testifying on behalf of Missouri-American Water Company?

19 A. I am.

20 Q. In that regard have you caused to be prepared
21 two pieces of prepared testimony?

22 A. I have.

23 Q. The first of which I understand has been marked
24 for purposes of identification as Exhibit 1 and it titled the
25 Direct Testimony of John R. Wilde. Do you have that in front of

1 you, sir?

2 A. I do.

3 Q. Are there any corrections or revisions that you
4 need to make to the prepared testimony at this time?

5 A. Not to my direct.

6 Q. With respect to the answers and information
7 contained in the prepared testimony as well as the schedules
8 attached thereto, is that true and correct to the best of your
9 knowledge, information, and belief?

10 A. Yes.

11 Q. Thank you, sir. Let me turn your attention to
12 Exhibit Number 2, which I believe is titled Rebuttal Testimony
13 of John R. Wilde. Do you have that in front of you?

14 A. I do.

15 Q. And do you have any corrections or revisions
16 that you need to make to that testimony at this time?

17 A. I do. There is a correction to the number on
18 Page 3, Line 13. The number on that page is 544857. The number
19 should be 554893.

20 Q. Thank you, sir. Any other changes or
21 corrections?

22 A. That would be the only substantive change.

23 Q. Okay. Then with respect to the information and
24 the answers contained in that prepared rebuttal testimony, is
25 that true and correct to the best of your knowledge,

1 information, and belief?

2 A. Yes.

3 Q. Finally, attached to your rebuttal testimony was
4 a schedule, confidential schedule. As I understand that has
5 been marked as Exhibit 3C. A one-page document that appears to
6 be a Form 1120 US Corporation income tax return. Do you have
7 that in front of you?

8 A. No, I don't. It was confidential. Yes.

9 Q. And is that the schedule that you reference in
10 you're prepared direct testimony?

11 A. Yes, it is.

12 Q. And is the information there true and correct to
13 the best of your knowledge, information, and belief?

14 A. Yes, it is.

15 Q. Thank you, sir.

16 MR. ENGLAND: Your Honor, I don't believe I have
17 any other questions for the witness. I would, subject to
18 cross-examination, offer the Exhibits 1, and 2, and 3C.

19 (WHEREIN; Company's Exhibits 1, 2, and 3C were
20 offered into evidence.)

21 JUDGE HATCHER: Any objections to the admission
22 of Exhibit 1, 2, and 3C?

23 MR. JOHNSON: No objection.

24 JUDGE HATCHER: They are so admitted.

25 (WHEREIN; Company's Exhibits 1, 2, and 3C were

1 received into evidence.)

2 MR. ENGLAND: Thank you, Your Honor. I tender
3 the witness for cross-examination.

4 JUDGE HATCHER: Thank you very much.
5 Cross-examination by my list I have Ms. Shemwell of Public
6 Counsel going first.

7 MS. SHEMWELL: Thank you very much. I have no
8 questions for Mr. Wilde.

9 JUDGE HATCHER: Thank you.

10 And Mr. Johnson?

11 MR. JOHNSON: Thank you, Judge. May I inquire
12 from my seat?

13 JUDGE HATCHER: Yes.

14 MR. JOHNSON: Thank you.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q. Good morning, Mr. Wilde.

17 A. Good morning.

18 Q. Would you agree that Missouri-American has made
19 plant investments from January 1, 2018 onward that were not ISRS
20 eligible?

21 A. Yes.

22 Q. All right. Mr. Wilde, I'm going to hand to you
23 what has been marked as Staff Exhibit Number 11.

24 MR. JOHNSON: May I approach?

25 JUDGE HATCHER: Yes, you may.

1 COMMISSIONER HALL: Thank you.

2 BY MR. JOHNSON:

3 Q. Mr. Wilde, would you agree that this is a
4 response submitted by Missouri-American to Staff DR001?

5 A. Yes.

6 Q. And would you agree that this DR requested
7 Missouri-American's gross non-ISRS plant additions for the
8 periods of January 1, 2018 through September 2018 and October
9 2018 to March 2019?

10 A. Yes.

11 Q. And in response of Missouri-American submitted
12 an attachment containing various dollar values as its response;
13 is that correct?

14 A. I am not who it was requested from so I only see
15 the one attachment. I don't see an attachment on the top. I
16 wouldn't know that. I'm not the witness. That's Brian LaGrand
17 that this information was requested from.

18 Q. Would he be better able to confirm this
19 document?

20 A. Yes. Beyond what's on the page I wouldn't know
21 what --

22 Q. All right. Well, based on this response, this
23 Page 2 of this response, would you agree that the total amount
24 of gross plant additions made by Missouri-American that were
25 non-ISRS eligible from January 1, 2018 through March 31st total

1 approximately \$93,853,000?

2 A. Subject to check. I don't have a calculator,
3 but yes.

4 Q. And if one were to look at only the current ISRS
5 period of October 2018 through March 2019, would you agree that
6 the amount of gross plant additions that were not ISRS eligible
7 made by Missouri-American during that period was approximately
8 \$50 million?

9 A. Yes.

10 Q. Has any of Missouri-American's total plant
11 investments made since January 1, 2018 been directly reflected
12 in Missouri-American's current base rates?

13 A. No.

14 Q. Would it be accurate to generally assume that
15 non-ISRS plant additions made since January 2018 generated no
16 incremental revenue for Missouri-American as the costs are not
17 reflected in base rates?

18 A. Can I repeat the question, just so I make sure
19 that I have it?

20 Q. Certainly.

21 A. So you're asking me if the non-ISRS investments
22 generated any pretax or taxable income during that period? Is
23 that what you are asking?

24 Q. Yes?

25 A. That would be true.

1 Q. Would it be accurate to assume that
2 Missouri-American has incurred some amount of incremental tax
3 depreciation and repair allowance deductions related to non-ISRS
4 plant additions made since January 2018?

5 A. That would be true.

6 Q. Would you agree that if Missouri-American's
7 non-ISRS plant investment made since January 2018 has generated
8 no revenue but has resulted in incremental tax deductions that a
9 taxable loss has resulted similar to that claimed by
10 Missouri-American in relation to its ISRS investment?

11 A. Yeah. That's true.

12 Q. I'd like to ask you a few questions regarding
13 the confidential Schedule JRW-1 that attached to your rebuttal
14 testimony. Mr. Wilde, I'm going to attempt to ask questions
15 that leave out the specific amounts included. Hopefully it will
16 not necessitate going into in camera. However, please if
17 there's anything in any of your responses that you believe would
18 be confidential, please indicate so and we can go in camera at
19 that time.

20 Is this a page from an actual 2017 federal
21 income tax return filing?

22 A. 2017, it's a pro forma that prints out with the
23 page. So it's not necessarily part of the official return
24 record. It's what considered a pro forma. It supports a white
25 paper that is a consolidation. So none of the numbers on here

1 can be found on the face of the actual tax return.

2 Q. What were your responsibilities in submitting
3 the information contained on this form to the IRS?

4 A. I reviewed this information.

5 Q. All right. In that top section on this form is
6 labeled as income. Can you generally describe what the numbers
7 in this section represent?

8 A. It's generally what I would call the items of --
9 that would be a credit to an income statement or a credit to a
10 tax return that are income in nature, so it would be like gross
11 receipts, dividends, interests, gross rents, those kinds of
12 things. Just your gross income without deductions except the
13 top line would have cost of goods sold if you have it deducted
14 from it. But utilities generally don't put something in that
15 line.

16 Q. The middle section of this page is labeled as
17 deductions. Can you please describe what the amounts in this
18 section represent?

19 A. Those are your typical day-to-day kinds of
20 deductions that you record on a tax return under the tax code.
21 So they are stated as if the calculation or expense was done
22 pursuant to the tax code.

23 Q. Now, Line 14 on your schedule is labeled repairs
24 and maintenance. Does this amount include the repair allowance
25 deduction referenced in your testimony in this case?

1 A. Which line?

2 Q. Line 14?

3 A. Part of the repairs and maintenance deduction is
4 in that line. Part of it would be in other deductions. Part of
5 that would be in the depreciation line.

6 Q. Speaking of depreciation, Line 20 of this
7 schedule is labeled depreciation. Does the amount on that line
8 include the accelerated tax appreciation deduction referenced in
9 your testimony in this case?

10 A. Yes.

11 Q. Line 27 of the schedule is total deductions; is
12 that correct?

13 A. The -- no. Well, it's correct. It is a total
14 of those particular deductions. But if you look down at Line 29
15 there is net operating loss deductions, special deductions that
16 also are deductions that also result in a book tax difference.

17 Q. Okay. Thank you, Mr. Wilde. But Line 27 is
18 labeled total deductions; is that correct?

19 A. Yeah. But you can't affect that line without
20 affecting Line 29 if you're in a loss situation.

21 Q. We will get to Line 29 in a second. Thank you
22 very much. Line 28 is called taxable income before net
23 operating loss, deductions and special deductions; is that
24 correct?

25 A. That's correct.

1 Q. Now, how is the amount in Line 28 calculated?

2 A. It's the subtraction of Line 27 from Line 11.

3 Q. Okay. And on this document Line -- the value in
4 Line 28 is shown as a negative amount on the Company's 2017 tax
5 return. Does this mean that Missouri-American's total
6 deductions exceeded its total income for tax purposes in 2017?

7 A. As presented on this form, but not presented
8 when it was consolidated.

9 Q. Okay.

10 A. Because Line 29 would have had a positive number
11 resulting in 28 being a sum down to the taxable income line on
12 Line 30. And Line 30 would have been zero. Lines 30 would be
13 zero on the consolidated. So if I carried this into the
14 consolidation workpaper, I wouldn't have a negative 40 on the
15 bottom line of taxable income. I would only -- I would have
16 zero.

17 Q. In consolidation workpaper, are you talking
18 about the American Water Works consolidated return?

19 A. So because these are just pro forma statements
20 anything that is subject to limitation is done in a
21 consolidation entry. So you don't put it on the pro forma
22 return. You put it in the consolidation. So the entry that you
23 would create for the activity that occurred in 2017, that would
24 affect my NOL, wouldn't be done on this form. But it shows --
25 the math shows up all this form. Ultimately -- if I had a \$40

1 million --

2 MR. ENGLAND: Excuse me a second. Mr. Wilde,
3 we're trying to stay away from the use of numbers. If you could
4 just talk in terms of negative or positive numbers.

5 THE WITNESS: If I had the negative number on
6 Line 28, I would have a positive number in Line 29 equal to that
7 amount on my federal workpaper for the consolidation, offsetting
8 that making Line 30 zero.

9 BY MR. JOHNSON:

10 Q. Okay. On this form on Line 29 it's labeled net
11 operating loss deduction. The purposes of this form, what is
12 Line 29 represent?

13 A. The change in the net operating loss
14 carryforward that is created by Line 28.

15 Q. And for 2017 the amount shown for Line 29 --
16 hold on for one second. Thank you for bearing with me.

17 The amount shown 29A for the purposes of this
18 form is zero; is that correct?

19 A. Yes.

20 Q. And what does that indicate?

21 A. It simply indicates you don't do that activity.
22 You don't ever -- you would never present that activity on this
23 particular form. It doesn't go into the calculation of a
24 return.

25 Q. Would it be accurate to say that no amount of

1 2017 taxable income could be offset by NOL because there was a
2 taxable loss experience?

3 A. No. If Line 28 was negative or positive, that
4 negative or positive would be recorded in the workpaper that
5 generates then the offsetting change in the consolidation. So
6 there's always going to be -- whatever Line 28 is when you have
7 a beginning and ending NOL balance, there's always going to be a
8 Line 29A somewhere. It just doesn't show up on a pro forma. It
9 shows up in the workpaper that you do for the consolidation
10 because it is a limited calculation, so you have to do it but it
11 is a direct correlation. It's just a mechanic not necessarily
12 association.

13 Q. Mr. Wilde, on a consolidated basis did American
14 Water Works have a net loss?

15 A. Line 28 will always be what it is, a positive or
16 negative.

17 Q. I understand, Mr. Wilde. I'm asking you for
18 2017 in American Water works consolidated filing, did it
19 reported a net loss?

20 A. On Line 28?

21 Q. Yes.

22 A. For '18?

23 Q. For 2017?

24 A. For 2017, yes.

25 Q. Was it then able to utilize a net operating loss

1 deduction?

2 A. Not for '17.

3 Q. Okay. Thank you. Line 30 is labeled taxable
4 income on this document. Is that amount shown as a negative
5 number for 2017?

6 A. So which line?

7 Q. Line 30.

8 A. It's -- again would resolve to zero.

9 Q. But on this document shows a negative number?

10 A. This is in '18 -- or this is '17. You're asking
11 about '18?

12 Q. I'm asking you about 2017?

13 A. So 2017 it's negative.

14 Q. Okay. Thank you.

15 A. For 2018, I believe it would be positive.

16 Q. Okay. But does the fact that the amount on this
17 document -- the fact that is a negative, does that mean that
18 Missouri-American was generating a net operating loss
19 carryforward amount in 2017?

20 A. Yes.

21 Q. All right. Now let's turn to
22 Missouri-American's 2018 filing. When does Missouri-American
23 expect to file with the IRS a schedule similar to this or the
24 information contained on this schedule?

25 A. October -- before October 15th.

1 Q. Now, are the amounts that will ultimately be
2 included with -- or be sent to the IRS in that 2018 known as of
3 today?

4 A. They are knowable. I don't know if they are
5 known yet. They're not completed 100 percent.

6 Q. And for 2018, will the amount shown for repairs
7 and maintenance on Line 14 of this document be the full amount
8 of the deduction that is expected to be available to
9 Missouri-American in 2018?

10 A. Say that again. On this document -- the repair
11 on this document?

12 Q. For 2018 as it appears on this document on Line
13 14 repairs and maintenance, for the 2018 return on that line
14 would Missouri-American expect the full amount of the deduction
15 available to it to be represented there?

16 A. Yes.

17 Q. And does Missouri-American expect the amounts to
18 be shown on this line to be attributable in part to
19 Missouri-American's ISRS plant additions made in 2018?

20 A. It would be respective of all deductions. There
21 is no limit to the number that you put there, so that is not
22 where the limit occurs. You put -- you could have \$30 billion
23 of deductions and put them on the form.

24 Q. Would part of those deductions be attributable
25 to Missouri-American's ISRS plant additions for 2018?

1 A. Yes.

2 Q. Now on the amount shown on Line 20 titled
3 depreciation, for 2018 would Missouri-American expect it to
4 contain the full amount of accelerated depreciation deduction
5 available to it?

6 A. Yes.

7 Q. And will the amounts shown on this line be
8 attributable in part to Missouri-American's ISRS plant additions
9 made in 2018?

10 A. Say that again.

11 Q. Will the amounts shown on Line 20, depreciation,
12 be attributable in part to Missouri-American's ISRS plant
13 additions made in the year 2018?

14 A. Yes.

15 Q. Now, for 2018 does Missouri-American expect the
16 amount shown on Line 28, taxable income, will be a positive
17 amount?

18 A. Yes, and on the federal side I would say that
19 29E would be the opposite color of that in the consolidation
20 schedule. Reconciling the 30 to zero.

21 Q. Okay. So the fact you expect Line 29 to
22 represent a positive value, does this mean you expect
23 Missouri-American's total tax deduction in 2018 will be less
24 than its total income for tax purposes?

25 A. Total deductions? The total of -- I expect to

1 be -- the total of Line 27 and 29C, total deductions to be equal
2 to taxable income and resolve to zero.

3 Q. Do you expect the deductions attributable to the
4 2018 tax year to be less than its total income for tax purposes?

5 A. Equal to.

6 Q. Equal to. So when you say that it should be
7 zero, are you anticipating that there will be an amount
8 reflected on Line 29A net operating loss deductions?

9 A. According to all of the schedules in the record,
10 I believe that the Number in 29A that will be attributed to 28
11 will be equal. It will be the opposite color of -- so if Line
12 28 is negative, that same number will be a positive in Line 29A
13 in the consolidation worksheet. And the result of those numbers
14 will always resolve to zero on Line 30.

15 Q. All right. I'm going to try to clarify this a
16 little bit, Mr. Wilde. You stated earlier you are expecting
17 Line 28 amount for 2018 to be a positive number; is that
18 correct?

19 A. Right.

20 Q. So would it be correct to assume that in Line
21 29A amount would be a negative number?

22 A. That's correct.

23 Q. And the fact that -- would the number in Line
24 29A reflect a net operating loss carryforward amount from a
25 prior period?

1 A. It would be that activity that relate -- the
2 activity that's occurring in the current year impact on that
3 balance. So it wouldn't be a prior period number. It would be
4 the activity related to the current year that is affecting that
5 balance. It is not the balance, it is the activity that's
6 occurring in the current year.

7 Q. So in other words, you take the prior period
8 balance and adjust it for what has occurred in the current tax
9 period?

10 A. It's the current year -- it's the current year
11 use or build that goes in.

12 Q. And in this case it's used?

13 A. In this case there is a build. In the case that
14 you're talking about for '18 that would be a use.

15 Q. So why was the amount in Line 2019 -- excuse me
16 -- 29A a zero for 2017, but is expected to have a value in 2018?

17 A. So as I said this is a pro forma form. It's not
18 something that's -- it's to help people understand what is the
19 activity that is not limited, that's being recorded. It doesn't
20 show Line 29A, 29B because you have to apply logic that's only
21 done on a workpaper.

22 Q. Okay. Thank you Mr. Wilde. In relation to this
23 pro forma document, the Line -- will the ultimate number on Line
24 29, will it represent the amount of Missouri-American's
25 accumulated NOLC generated prior to 2018, that is usable to

1 offset taxable income in 2018?

2 A. No. It would only be the amount that's usable
3 against current year activity.

4 Q. The amount usable against current year activity
5 in relation to prior net operating loss amounts?

6 A. No. It is related to this year's activity.

7 Q. The offset to that number is related to this
8 year's activity?

9 A. This year's activity drives what's happening in
10 the balance.

11 Q. Will the fact that there is a number expected to
12 be included in 29A for 2018, does that reflect that there is an
13 expectation that the Company's NOLC balance will be reduced?

14 A. Yes.

15 Q. Thank you. Finally, Mr. Wilde, do you expect
16 the amount of taxable income on Line 30 of this document for
17 2018 to be zero?

18 A. Based on all the evidence, yes. It would be
19 zero because there would be a carryover deductions to the
20 following year.

21 Q. Thank you very much.

22 MR. JOHNSON: I have no further questions.

23 JUDGE HATCHER: Thank you. And now we turn to
24 questions from the bench.

25 COMMISSIONER HALL: No questions. Thank you.

1 JUDGE HATCHER: All right. I do have a couple
2 questions, Mr. Wilde.

3 QUESTIONS BY JUDGE HATCHER:

4 Q. In one of your testimonies you had stated that
5 the Company self-reported the normalization violation to the
6 IRS?

7 A. We -- the potential violation.

8 Q. Potential. Would you be able to provide a copy
9 of that letter for the record as an exhibit?

10 A. It was sent to Staff.

11 MR. JOHNSON: Yes, Your Honor.

12 MR. COOPER: Yes, Your Honor.

13 BY JUDGE HATCHER:

14 Q. Would you detail that process? I'm interested
15 in if it also has kind of a -- if it allows input from other
16 parties like this proceeding. For example, would Staff or would
17 OPC be able to participate in this IRS determination of the
18 normalization violation?

19 A. Actually, if you look at my direct testimony, it
20 kind of lays out that since -- the rules require that we get
21 input from the Commission and therefore that typically means
22 Staff. And so Staff's been participating in the drafting --

23 Q. No. That is not what I'm trying about. The
24 self-reporting that you did --

25 A. No. That is just a taxpayer mechanism.

1 Q. Okay. And then my last question -- and it may
2 be somewhere in the record. I just wanted to make sure that I
3 have the number set out on its own. Do you know the amount of
4 net operating loss incurred or generated during this current
5 ISRS period not including any carryover?

6 A. So if you look at Brian LaGrand's schedule he
7 actually does the calculation that -- showing the math that
8 Staff just went through with me. If you look at that schedule
9 you will see the calculation of Lines 28 that we were
10 discussing, Lines 11, Lines 30. It shows the interaction. It
11 shows the activity to each of those lines that's created by what
12 we believe is associated with the ISRS and what period it
13 resulted in. That schedule tries to point out that our position
14 is it's the activity in the ADIT that we're trying to capture
15 because that's what is generating the interest-free capital and
16 the -- what's associated directly with the ISRS. We've been
17 very meticulous not capture things that are unrelated or not
18 directly connected to the ISRS for that period.

19 JUDGE HATCHER: Thank you. And with that, we
20 will turn back recross-examination and I believe we turn first
21 to Ms. Shemwell.

22 RECROSS-EXAMINATION BY MS. SHEMWELL:

23 Q. Thank you. When will you file your 2019 tax?
24 When will American Water Works file its 2019 taxes?

25 A. April 15th. The federally filed and I believe

1 the state is either -- I'm sorry -- October 15th. I apologize.
2 And I believe it's filed on the same date or a month after.

3 Q. So that's October 15th, 2020?

4 A. The '19 will be filed in 2020. 2018 will be
5 filed in 199-- I don't know if there is a weekend in there so
6 there could be a date or two.

7 Q. That's close enough. Thank you.

8 MS. SHEMWELL: That is all I have. Thank you.

9 JUDGE HATCHER: Thank you, Ms. Shemwell.

10 Back to Staff, Mr. Johnson?

11 MR. JOHNSON: I have no questions. Thank you,
12 Judge.

13 JUDGE HATCHER: And redirect, Mr. England?

14 MR. ENGLAND: Thank you.

15 REDIRECT EXAMINATION BY MR. ENGLAND:

16 Q. Mr. Wilde, with reference to Staff Exhibit 11,
17 do you have that in front of you? That's the Company's Data
18 Request Response to -- data request response to Data Request 11?

19 A. Yes. I have it in front of me.

20 Q. I believe you were asked the question if there
21 is a net operating loss associated with non-IRS investments and
22 you answered yes; is that right?

23 A. Yes.

24 Q. And is there a net operating loss associated
25 with IRS investments?

1 A. Yes.

2 Q. For purposes of this case, is the net operating
3 loss you or Mr. LaGrand has calculated for IRS investments
4 inclusive of any loss associated with non-IRS investments?

5 A. No.

6 Q. My co-counsel points out I've got my initials
7 mixed up and I've been meaning to say ISRS instead of IRS?

8 A. I know what you meant.

9 Q. The record may not. I apologize. Thank you,
10 sir. That's all of my questions.

11 JUDGE HATCHER: Thank you. And Mr. Wilde, you
12 are excused.

13 Mr. England, if you'd like to call your next
14 witness.

15 MR. ENGLAND: Thank you, Your Honor.
16 Missouri-American will call Mr. Brian LaGrand as its next
17 witness, please.

18 JUDGE HATCHER: Mr. LaGrand please come forward.
19 (Witness sworn.)

20 JUDGE HATCHER: Please be seated.

21 Mr. England?

22 MR. ENGLAND: Thank you, Your Honor.

23 BRIAN LAGRAND having been first duly sworn testified as follows:

24 DIRECT EXAMINATION BY MR. ENGLAND:

25 Q. Would you please state your name for the record,

1 please?

2 A. Brian W. LaGrand.

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

4 A. I am employed by Missouri-American Water as the
5 director of rates.

6 Q. In that capacity have you caused to be prepared
7 two pieces of prepared testimony filed earlier in this case?

8 A. Yes, I have.

9 Q. My understanding is that for purposes of
10 identification one piece of testimony titled Direct Testimony of
11 Brian W. LaGrand has been marked as Exhibit 4. Do you have that
12 in front of you?

13 A. Yes, I do.

14 Q. Was it prepared by you or under your
15 supervision?

16 A. It was.

17 Q. Do you have any corrections or changes to make
18 to that testimony at this time?

19 A. No, I do not.

20 Q. I believe you also had several schedules
21 attached to that testimony. Do they require any change or
22 correction?

23 A. No.

24 Q. Is the information contained in both the
25 testimony and the schedules true and correct to the best of your

1 knowledge, information, and belief?

2 A. Yes.

3 Q. Thank you. With respect to the document
4 entitled Rebuttal Testimony of Brian W. LaGrand, which I
5 understand has been marked for purposes of identification as
6 Exhibit Number 5, do you have that in front of you?

7 A. I do.

8 Q. Do you have any corrections or changes to that
9 testimony?

10 A. No.

11 Q. I don't believe you have any exhibits to that
12 testimony, do you?

13 A. I do not.

14 Q. Is the information contained in the prepared
15 testimony in Exhibit 5 true and correct to best of your
16 knowledge, information, and belief?

17 A. Yes.

18 Q. Thank you, Mr. LaGrand.

19 MR. ENGLAND: I have no other questions of the
20 witness. I will tender exhibits -- excuse me -- offer Exhibits
21 4 and 5 and tender the witness for cross-examination.

22 (WHEREIN; Company Exhibits 4 and 5 were offered
23 into evidence.)

24 JUDGE HATCHER: Thank you, Mr. England.

25 Any objections to the admission of Exhibit 4 and

1 Exhibit 5? That is the direct and rebuttal testimony of
2 Mr. LaGrand?

3 MR. JOHNSON: No objection.

4 MS. SHEMWELL: No objection.

5 JUDGE HATCHER: Thank you, seeing none they are
6 so admitted.

7 (WHEREIN; Company Exhibits 4 and 5 were received
8 into evidence.)

9 JUDGE HATCHER: We turn to cross-examination,
10 Office of Public Counsel.

11 MS. SHEMWELL: Public Counsel has no questions
12 of Mr. LaGrand.

13 Good morning, Mr. LaGrand.

14 THE WITNESS: Good morning.

15 JUDGE HATCHER: Thank you. And Mr. Johnson, for
16 Staff?

17 MR. JOHNSON: Yes. Thank you.

18 CROSS-EXAMINATION BY MR. JOHNSON:

19 Q. Mr. LaGrand, I'm going to hand you what was
20 marked as Exhibit Number 11.

21 MR. JOHNSON: May I approach? Excuse me.

22 BY MR. JOHNSON:

23 Q. I believe Mr. Wilde indicated that you would be
24 the appropriate witness to respond to this DR. Would you agree
25 that this is a response submitted by Missouri-American to Staff

1 DR0011?

2 A. Yes.

3 Q. And this DR requested Missouri-American's gross
4 non-ISRS plant additions for the periods of January 1, 2018 to
5 September 2018 and October 2018 to March 2019?

6 A. Yes.

7 Q. And as a response Missouri-American submitted an
8 attachment containing various dollar values that I discussed
9 with Mr. Wilde?

10 A. Yes.

11 MR. JOHNSON: Judge, at this time I move to
12 admit Staff Exhibit 11 into evidence.

13 (WHEREIN; Staff Exhibit 11 was offered into
14 evidence.)

15 JUDGE HATCHER: Any objections to the admission
16 of Staff Exhibit Number 11?

17 MR. ENGLAND: No objections, Your Honor.

18 JUDGE HATCHER: Seeing none it is so admitted.

19 (WHEREIN; Staff Exhibit 11 was received into
20 evidence.)

21 JUDGE HATCHER: Go ahead.

22 MR. JOHNSON: I have no further questions.

23 Thank you, Mr. LaGrand.

24 JUDGE HATCHER: All right. Any questions from
25 the bench at this time?

1 COMMISSIONER HALL: No questions. Thank you.

2 JUDGE HATCHER: Seeing none, we will go with
3 recross-examination. First, we go to Ms. Shemwell, Office of
4 Public Counsel.

5 MS. SHEMWELL: I have no recross.

6 JUDGE HATCHER: Thank you.

7 And Mr. Johnson?

8 MR. JOHNSON: No, Judge. Thank you.

9 JUDGE HATCHER: And back to redirect,
10 Mr. England?

11 MR. ENGLAND: None, Your Honor. Thank you.

12 JUDGE HATCHER: Thank you.

13 And Mr. LaGrand you are dismissed.

14 THE WITNESS: Thank you.

15 JUDGE HATCHER: And I believe we now have Office
16 of Public Counsel calling their first witness?

17 Ms. Shemwell, if you would call your first
18 witness, please.

19 MS. SHEMWELL: Thank you. Public Counsel calls
20 Mr. John Riley to the stand.

21 (Witness sworn.)

22 JUDGE HATCHER: Thank you. Please be seated.

23 And Ms. Shemwell, go ahead.

24 JOHN RILEY having been first duly sworn testified as follows:

25 DIRECT EXAMINATION BY MS. SHEMWELL:

1 Q. Mr. Riley, would you state your name for the
2 record, please?

3 A. John S. Riley.

4 Q. Mr. Riley, have you prepared testimony in this
5 case?

6 A. Yes, I have.

7 Q. And your direct has been marked as Exhibit
8 Number 12; is that correct?

9 A. Yes, ma'am.

10 Q. And your rebuttal as Exhibit Number 13?

11 A. Yes, ma'am.

12 Q. Do you have any attachments?

13 A. There are exhibits on both my direct and
14 rebuttal.

15 Q. Thank you. You prepared this testimony
16 yourself?

17 A. Yes, I did.

18 Q. Do you have any corrections or additions to your
19 testimony?

20 A. No, I do not.

21 Q. Is this testimony true and correct to the best
22 of your knowledge and belief?

23 A. Yes, ma'am.

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

1 A. Yes, they would.

2 MS. SHEMWELL: I move for admission of Exhibits
3 12 and 13 and tender the witness for cross-examination.

4 (WHEREIN; OPC Exhibits 12 and 13 were offered
5 into evidence.)

6 JUDGE HATCHER: Thank you. Any objections to
7 the admission of the direct and rebuttal testimony of Mr. Riley
8 as Exhibits 12 and 13?

9 MR. JOHNSON: No, Judge.

10 MR. COOPER: No, Your Honor.

11 JUDGE HATCHER: Seeing none, they are so
12 admitted.

13 (WHEREIN; OPC Exhibits 12 and 13 were received
14 into evidence.)

15 JUDGE HATCHER: We will turn to
16 cross-examination, Mr. Johnson.

17 MR. JOHNSON: Thank you, Judge. I have no
18 questions.

19 JUDGE HATCHER: Thank you.

20 And Mr. England, any cross-examination?

21 MR. ENGLAND: I do, Your Honor. Thank you.

22 CROSS-EXAMINATION BY MR. ENGLAND:

23 Q. Good morning, Mr. Riley?

24 A. Good morning, sir.

25 Q. Let me start by directing your attention to your

1 direct testimony, Page 2, Lines 16 and 17 where you state -- let
2 me make sure you are there and then I'll either quote or
3 paraphrase as closely as possible what I believe you are saying
4 there. You say NOL, which stands for net operating loss is an
5 accounting fiction where for income tax purposes a company
6 reports deductions that are higher than reported revenues. Do
7 you see that?

8 A. Yes, sir.

9 Q. I think you further state that one of the main
10 reasons for these losses is the use of accelerated depreciation.
11 Correct?

12 A. That's correct.

13 Q. And would you agree with me that a company
14 cannot take accelerated depreciation unless it has invested
15 money in plant?

16 A. That's correct.

17 Q. Okay. So when you say in your rebuttal
18 testimony that no money was expended to produce an NOL that's
19 not entirely true, is it, because money was expended to acquire
20 and install ISRS plant, which produced depreciation expense that
21 generated or added to a net operating loss. Correct?

22 A. Expended, yes. You expended money to put plant
23 into rate base and you have a tax effect that created a net
24 operating loss, yes.

25 Q. Thank you. Also in your direct, Page 3, Lines

1 24 and 25 you talk about or state that an NOL is a tax return
2 item and no tax return item -- excuse me -- and no tax return
3 has yet been filed that covers the time frame -- this time frame
4 -- so no NOL should be claimed. I believe you're talking about
5 the current time frame of the six months that ended March 31st,
6 2019?

7 A. Well, there hasn't been a tax return filed for
8 2018 -- for the entire year of 2018 or 2019.

9 Q. I'm sorry. Say that again?

10 A. There hasn't been a tax return filed.

11 Q. You say has not?

12 A. Has not.

13 Q. All right. Thank you. I'm just trying to tie
14 when say you this time frame, I think you are referring to this,
15 what I will call, an ISRS period?

16 A. Yes, sir.

17 Q. Okay. Would you agree with me that accelerated
18 depreciation is also a tax return item?

19 A. Yes, it is.

20 Q. And that no tax return has yet been filed that
21 covers the same time frame, so no accelerated depreciation has
22 yet been claimed for the ISRS plant that is the subject of this
23 case?

24 A. Not on your tax return, no.

25 Q. So the use of accelerated depreciation could

1 also be characterized as an accounting fiction and should be
2 referred to as hypothetical accelerated depreciation for
3 purposes of this case?

4 A. I don't think I would characterize it that way,
5 no.

6 Q. It hasn't been accumulated and put into -- or
7 accounted for and put into a tax return yet, has it?

8 A. There has been no tax return been filed.

9 Q. Isn't it sort of then the same position as a net
10 operating loss?

11 A. I wouldn't characterize it that way, no.

12 Q. I didn't think you would, but I thought I would
13 give it a shot?

14 A. Okay.

15 Q. I would like to ask you a few questions about
16 your rebuttal Schedule JSR-R-1.

17 A. Yes.

18 Q. If I understand this correctly very close to the
19 top there you have assumed a \$100,000 addition to rate base; is
20 that right?

21 A. Yes, sir.

22 Q. And then down a little bit further you have
23 hypothetical income of \$100,000. Do you see that?

24 A. Yes, sir.

25 Q. First of all, how is it possible for a regulated

1 entity to generate a \$100,000 of income on a \$100,000 of rate
2 base? In my way rudimentary math would be a 100 percent return
3 on investment?

4 A. That would be nice, but actually what the
5 \$100,000 income here is -- it is just here as a number to use as
6 you walk through how the accounting would be booked for -- the
7 \$100,000 is hypothetical, but it's only there as an illustration
8 to show how the accounting is booked for accumulated deferred
9 income tax -- tax expense.

10 Q. I'd like -- I'm sorry. I'd like to take your
11 example and perhaps hypothecate a more reasonable income of say
12 \$10,000, which would be a 10 percent return on your investment.
13 Correct?

14 A. We can do that.

15 Q. If you do that, your taxable income that you
16 currently have, \$80,000 would now be a \$10,000 loss. Correct?

17 A. Well, if we were actually talking about income
18 on this exhibit that would -- that would be true. However, this
19 exhibit is really to demonstrate how accumulated deferred income
20 tax comes about in a ratemaking situation.

21 Q. I understand, but at least based on the column
22 and the calculations you have there, if in fact you have a
23 \$100,000 addition to rate base a hypothetical income of 10,000,
24 a tax deduction of \$20,000 attributable to depreciation without
25 regard to any other deductions, you are in a net loss situation

1 of \$10,000. Correct?

2 A. In that instance, yes. We'd have the loss.

3 Q. And if we were to say or characterize that
4 \$100,000 addition to rate base is ISRS plant, what we have is a
5 net operating loss directly associated with ISRS plant.
6 Correct?

7 A. I couldn't make that leap. ISRS has a rate of
8 return calculation in it that would -- that's built into the
9 case, so to discuss ISRS proceedings like this -- like this
10 example here would -- it's not really apples and apples.

11 Q. Well, ISRS plant is no different than non-ISRS
12 plant, is it?

13 A. Not once it's in rate base. No.

14 Q. Depreciation on ISRS plant is no different than
15 depreciation on non-ISRS plant?

16 A. No. No, I don't believe it is.

17 Q. So what's the difference in your example if you
18 are assuming a \$100,000 addition to rate base versus a \$100,000
19 addition to ISRS rate base?

20 A. Well, there wouldn't be a difference in
21 accumulated deferred income tax.

22 Q. Or in the taxable income, be that positive or
23 negative?

24 A. It's probably true. This isn't going to be a
25 tax return item here.

1 Q. All right. Thank you, sir.

2 MR. ENGLAND: I have no other questions.

3 JUDGE HATCHER: Thank you, Mr. England. Any
4 questions from the bench?

5 COMMISSIONER HALL: No questions.

6 JUDGE HATCHER: Let's go to recross-examination.
7 First, we'll go to Mr. Johnson.

8 MR. JOHNSON: No questions. Thank you, Judge.

9 JUDGE HATCHER: Recross from Missouri-American,
10 Mr. England.

11 MR. ENGLAND: No. Thank you.

12 JUDGE HATCHER: And redirect from Ms. Shemwell.

13 MS. SHEMWELL: Thank you, Judge.

14 REDIRECT EXAMINATION BY MS. SHEMWELL:

15 Q. Mr. Riley, is this a general rate case?

16 A. No, this is not.

17 Q. Is the ISRS a revenue generating mechanism?

18 A. I would characterize it as yes.

19 Q. Can you characterize the difference between ADIT
20 and net operating loss?

21 MR. ENGLAND: Excuse me. Before you answer,
22 Mr. Riley --

23 Your Honor, I have an objection. I don't
24 believe this line of questioning relates to my
25 cross-examination.

1 JUDGE HATCHER: Ms. Shemwell, could you repeat
2 the question, please?

3 MS. SHEMWELL: Yes. He was asking how --
4 Mr. England was asking how he would characterize the difference
5 in ADIT from NOL, from the net operating loss, specifically
6 there was a line of questions about that.

7 MR. ENGLAND: Your Honor, I made no reference to
8 ADIT and all I was doing was asking in the very simplified
9 exhibit that he has attached to his testimony about whether
10 \$100,000 plant addition would be any different if it was in the
11 ISRS plant addition.

12 MS. SHEMWELL: Well, I remember it a little
13 differently in that he had some questions where Mr. Riley said
14 he would not characterize it the same way that Mr. England
15 characterized it and I did not think that those questions had to
16 do this particular schedule.

17 MR. ENGLAND: It had to do with accelerated
18 depreciation, Your Honor.

19 MS. SHEMWELL: The difference between
20 accelerated depression and NOL? Isn't ADIT accelerated
21 depreciation?

22 THE WITNESS: Well, accelerated depreciation is
23 one of the main components of accumulated deferred income tax
24 whereas accumulated deferred income tax is accelerated
25 depreciation less the regulated straight-line taking that dollar

1 amount and multiplying it by the tax rate. That is your
2 deferred income tax and as that goes on each year it is
3 accumulated deferred income tax. Whereas a net operating loss
4 is a tax return item, not a regulatory item and it is -- it is
5 using accelerated depreciation and many other tax return
6 expenses that may not necessarily be expenses used in regulated
7 -- and revenue requirement. And a net operating loss would be
8 on a tax return, not revenue requirement.

9 So it's the relationship of an accelerated
10 depreciation, it is -- accelerated depreciation is used on tax
11 return, which may or may not create a net operating loss.
12 Whereas, accelerated depreciation is not used in regulatory
13 ratemaking except for the determination of accumulated deferred
14 income taxes.

15 (WHEREIN; Commissioner Hall left the
16 proceedings.)

17 BY MS. SHEMWELL:

18 Q. Thank you. As you discussed Schedule JSR-R-1
19 with Mr. England were you addressing that operating loss in this
20 schedule?

21 A. No, I was not.

22 Q. And on here you're showing a tax rate of 21
23 percent; is that correct?

24 A. Yes, ma'am.

25 Q. Why?

1 A. That is the current federal income tax rate.

2 MS. SHEMWELL: I don't have any further. Thank
3 you, Judge.

4 JUDGE HATCHER: Thank you. Mr. Riley, you are
5 dismissed.

6 Mr. Johnson, if you would go ahead and call your
7 first witness.

8 MR. JOHNSON: Thank you, Judge. Staff calls
9 Mark Oligschlaeger.

10 JUDGE HATCHER: Before we get started with
11 Mr. Mark Oligschlaeger I like to go ahead and get back to the
12 objection that was raised by Mr. England. I will go ahead and
13 overrule that. He did ask the witness to characterize within
14 the scope of his example. I'll go ahead and let that
15 recharacterization stand within the scope.

16 (Witness sworn.)

17 JUDGE HATCHER: Thank you. Please be seated.

18 Mr. Johnson?

19 MR. JOHNSON: Thank you.

20 MARK OLIGSCHLAEGER having been first duly sworn testified as
21 follows:

22 DIRECT EXAMINATION BY MR. ENGLAND:

23 Q. Would you please state your name and spell your
24 last name for the record?

25 A. Yes. My name is Mark L. Oligschlaeger. My last

1 name is spelled O-L-I-G-S-C-H-L-A-E-G-E-R.

2 Q. Mr. Oligschlaeger, how are you employed and in
3 what capacity?

4 A. I am employed by the Missouri Public Service
5 Commission as the manager of the auditing department.

6 Q. Did you prepare or cause to be prepared direct
7 and rebuttal testimony in this matter marked as Exhibits 8 and
8 9?

9 A. I did.

10 Q. And do you have any changes or corrections to
11 that testimony?

12 A. I do not.

13 Q. Are the answers contained in that testimony true
14 and correct to the best of your knowledge and belief?

15 A. They are.

16 Q. If I were to ask you those same questions today
17 would your answers be the same?

18 A. Yes.

19 MR. JOHNSON: Judge, I move for the admission of
20 Exhibits 8 and 9 into the record.

21 (WHEREIN; Staff Exhibits 8 and 9 were offered
22 into evidence.)

23 JUDGE HATCHER: Do we have any objections to the
24 admission of Exhibit 8 and 9?

25 MS. SHEMWELL: No.

1 MR. ENGLAND: No objection, Your Honor.

2 JUDGE HATCHER: Without objection they are so
3 admitted.

4 (WHEREIN; Staff Exhibits 8 and 9 were received
5 into evidence.)

6 JUDGE HATCHER: Mr. Johnson?

7 MR. JOHNSON: Thank you, Judge. At this time I
8 would tender the witness for cross-examination.

9 JUDGE HATCHER: And first we go to the Office of
10 Public Counsel? Ms. Shemwell?

11 MS. SHEMWELL: Thank you.

12 CROSS-EXAMINATION BY MS. SHEMWELL:

13 Q. Good morning?

14 A. Good morning.

15 Q. Mr. Oligschlaeger, is Missouri-American Water
16 Company currently in a net operating loss situation?

17 A. Since January of 2018 they have not generated
18 any additional net operating loss.

19 Q. Were they in a net operating loss situation in
20 their most past rate case, general rate case?

21 A. Yes.

22 Q. And was that included in rates? Was the NOL
23 included in rates?

24 A. Well, I think it's -- obviously the case was
25 resolved through a stipulation and agreement and the details

1 behind the revenue requirement were not spelled out. But I
2 think it's reasonable to assume that some value for the net
3 operating loss deferred tax asset was included in that case.

4 Q. We have to make that assumption since it's a
5 stipulation. Correct?

6 A. Yes.

7 Q. This is not a general rate case?

8 A. It is not.

9 Q. In fact, it as a single-issue ratemaking case?

10 A. I would characterize it that way. Yes.

11 MS. SHEMWELL: That is all I have. Thank you.

12 JUDGE HATCHER: Thank you.

13 And Mr. England, any cross-examination from
14 Missouri-American?

15 MR. ENGLAND: Yes, Your Honor.

16 CROSS-EXAMINATION BY MR. ENGLAND:

17 Q. Good morning, Mr. Oligschlaeger?

18 A. Good morning.

19 Q. Beginning with your direct testimony on Page 3,
20 Line 13, I believe you begin a discussion -- sort of a general
21 discussion of tax timing differences, tax normalization,
22 flow-through, et cetera. Correct?

23 A. That is correct.

24 Q. You note at the top of Page 4 -- and I'm
25 paraphrasing -- that for most tax timing differences the IRS is

1 effectively mandated that regulatory commissions normalize the
2 benefits of accelerated depreciation tax deductions in setting
3 rates. Correct?

4 A. That is what I stated, yes.

5 Q. And in your approximately 38-year career with
6 the Commission will you agree with me that the Missouri Public
7 Service Commission has routinely adopted a tax normalization
8 policy when it comes to setting rates for the utilities it
9 regulates?

10 A. I would caveat that certainly for accelerated
11 depreciation tax benefits, that would be true. That it is not
12 necessarily true in all instances for other types of tax timing
13 differences.

14 Q. Fair enough. But for accelerated depreciation,
15 which is a fairly significant item, the Commission has
16 typically, if not in every instance, followed the normalization
17 requirements of the IRS?

18 A. Yes.

19 Q. And would you agree with me that the
20 normalization benefits -- or tax normalization, if you will,
21 benefits both the utility and its customers?

22 A. Well, certainly there is a direct financial
23 benefit to the utility to the extent the utilities take the
24 capital provided through deferred income taxes and reinvest it
25 in the business. I think it's reasonable to say there certainly

1 could be in our benefits to customers as well.

2 Q. I mean, utility commissions have the adoption
3 adopting a flow-through method. Correct? As opposed to tax
4 normalization?

5 A. For accelerated depreciation or in general?

6 Q. No. If they do flow-through then they can't
7 follow accelerated or implement accelerated depreciation.
8 Correct?

9 A. Well, yeah. The companies would not be allowed
10 to take those deductions and presumably those deductions would
11 not be reflected in rates in any manner.

12 Q. I would assume that if a utility commission
13 though that was more beneficial to the ratepayers they would
14 follow a flow-through method?

15 A. Well, yes. If your question is it better for
16 customers that the tax normalization rules be followed I would
17 agree with that.

18 Q. Okay. Thank you. If there is a violation of
19 the tax normalization rules it's my understanding the utility
20 would lose the ability to take accelerated depreciation; is that
21 correct?

22 A. I think that could happen. I don't know that in
23 every instance in which a commission were to violate, if that's
24 the right word, the normalization code that that would
25 necessarily result, but that could result.

1 Q. Do you know what the -- what a commission could
2 do to correct that violation if they wanted to?

3 A. Well, I think you're getting into kind of
4 procedural questions. I'm not sure I'm best equipped to answer.
5 I assume there are some procedural safeguards that could be
6 taken and certainly I think as Staff's counsel said earlier we
7 would be open to reasonable suggestions along that line.

8 Q. If however the Commission follows -- I'm going
9 to ask you a hypothetical here. If however, the Commission
10 follows the Staff's proposal in this case and establishes an
11 ISRS based upon Staff's proposal, which is as I understand a
12 surcharge customers pay, and it is later determined through a
13 private letter ruling that that method -- Staff's method -- is a
14 violation of the normalization requirements, do you see any
15 opportunity to cure that through some sort of retroactive
16 application of increased ISRS rates?

17 A. Yeah. I think you're asking me to get into
18 perhaps legal questions regarding retroactive ratemaking when
19 that is allowed and when that is not allowed. I think I'll
20 decline the opportunity to opine on that.

21 Q. What if -- this is kind of departing from my
22 script here, but since we got into it. What if the Commission
23 were to adopt the Company's proposal? Obviously, that increases
24 rate base, increases the surcharge, ISRS surcharge that would be
25 implemented, but with the caveat that if the letter ruling finds

1 that Staff's proposal is not a violation, the Company would be
2 required to refund that incremental difference to the ratepayers
3 through either base rates or future ISRS surcharges.

4 MR. JOHNSON: Judge, I'm going object on the
5 basis that this draws a -- or calls for a legal conclusion.

6 MR. ENGLAND: I think we can go back over the
7 last 38 years of Mr. Oligschlaeger's tenure here and find many
8 instances where he has offered legal, certainly had to deal with
9 legal conclusions or opinions. I'll accept the lay response, if
10 you please.

11 THE WITNESS: So the question was would it be
12 feasible perhaps to -- for the Commission to adopt the Company's
13 revenue requirement recommendation in this case but in the event
14 that the IRS affirms what the Commission did in the prior ISRS
15 case that there would be some kind of automatic uptick in ISRS
16 rates to account for those additional dollars in this case?

17 BY MR. ENGLAND:

18 Q. I think I'm proposing that we set the revenue
19 requirement higher to match the Company's recommendation. And
20 then if it is determined through the private letter ruling that
21 there would be no tax normalization violation, utilizing Staff's
22 approach the Commission could require a refund of that
23 incremental difference that the Company collected, which is as I
24 understand this approximately \$800,000 on an annualized basis.

25 MS. SHEMWELL: Judge, I'm going to object. This

1 is calling for multiple levels of speculation.

2 JUDGE HATCHER: Yes, Mr. England. I'm sorry.
3 I'm going to have to agree and sustain that.

4 MR. ENGLAND: Okay.

5 BY MR. ENGLAND:

6 Q. Would you agree with me that the Commission
7 should not intentionally make any decision that would jeopardize
8 or violate the tax normalization rules?

9 A. Certainly in the hypothetical situation where
10 all parties to a proceeding agreed that a ratemaking action
11 would constitute such a violation, I would certainly not
12 recommend the Commission do that.

13 Q. Okay. Tax timing differences that are created
14 by the use of accelerated depreciation are accounted for as
15 deferred tax liabilities or, I guess, DTLs as I have seen in
16 much of the testimony. Correct?

17 A. If you are talking about accelerated
18 depreciation tax timing differences, those would normally be
19 accounted for as deferred tax liabilities.

20 Q. And in rate cases those deferred tax liabilities
21 are used to reduce rate base all other things being equal?

22 A. Yes.

23 Q. Net operating losses as I understand are
24 accounted for as a deferred tax asset or DTA and would have the
25 effect of increasing rate base all other things being equal.

1 Right?

2 A. I agree.

3 Q. Okay. And would you agree that both deferred
4 tax liabilities and deferred tax assets are accounted for as
5 accumulated deferred income taxes or ADIT as it's been referred
6 to several times here?

7 A. Yes.

8 Q. At Page 6, Lines 6 through 8, I believe, of your
9 testimony.

10 MS. SHEMWELL: Which testimony?

11 MR. ENGLAND: Thank you for asking. Direct.

12 JUDGE HATCHER: Mr. England, which lines?

13 MR. ENGLAND: Lines 6 through 8.

14 BY MR. ENGLAND:

15 Q. I'm paraphrasing here or at least drawing a
16 conclusion that you note that NOLs are typically offset against
17 accumulated deferred income taxes when establishing the rate
18 base for a utility company, at least in a general rate
19 proceeding. Correct?

20 A. To the extent the overall ADIT balance and rate
21 base is negative absent the NOL, the NOL would have the impact
22 of decreasing the rate base reduction or increasing rate base.

23 Q. I think you answered my question.

24 MR. ENGLAND: But can I have that answer read
25 back to me, Your Honor.

1 (WHEREIN; the requested portion of the
2 transcript was read back.)

3 MR. ENGLAND: Thank you.

4 BY MR. ENGLAND:

5 Q. It's my understanding and I think I heard you
6 say in response to a question from Ms. Shemwell, that it's
7 reasonable to assume that NOLs were offset against deferred
8 income taxes for purposes of establishing a revenue requirement
9 for Missouri-American in its last rate case. Right?

10 A. Yes. I believe that is a reasonable assumption.

11 Q. Would it also be fair to say that it would have
12 probably been in Staff's workup or proposed revenue requirement
13 in that case?

14 MS. SHEMWELL: Judge, we entered into a
15 stipulation. It was a black-box, so all we can do is make
16 assumptions, which may or may not be reasonable.

17 MR. ENGLAND: I respectfully disagree. Staff's
18 proposed revenue requirements are a matter of public record in
19 that case. All I am asking is is that how Staff treated it for
20 purposes of its presentation or recommendation in the case, not
21 necessarily what the Commission ordered or adopted.

22 JUDGE HATCHER: I will allow it. Go ahead.

23 THE WITNESS: My recollection is the Staff's
24 case included an NOL balance in determining the overall ADIT in
25 that rate base.

1 BY MR. ENGLAND:

2 Q. Now, we have been talking about what occurs or
3 happens in a general rate case. Let's turn our attention or
4 let's talk about an ISRS proceeding. My understanding and
5 according to your testimony an ISRS proceeding is a form of
6 single-issue ratemaking. Would you agree?

7 A. Yes.

8 Q. Okay. And the ISRS statute -- again, would you
9 agree with this characterization, the ISRS statute is only
10 concerned with identifying the incremental or isolated revenue
11 requirement related to ISRS eligible plant investments?

12 A. As a general matter, I would agree with that.

13 Q. And that revenue requirement looks at what I
14 think you've referred to as the ISRS period, the period of time
15 those plant investments were put into service. Correct?

16 A. Yes.

17 Q. In this case we've got a six-month period of
18 investments for ISRS investments. Right?

19 A. Yes.

20 Q. Can it be viewed as sort of a six-month test
21 period, if you will?

22 A. You can characterize it that way, yes.

23 Q. Okay. And in this ISRS period we are looking at
24 select items, not necessarily all items, but what I call the big
25 ticket items that impact a revenue requirement associated with

1 the plant addition. I think the statute talks in terms of
2 looking at the original cost of the investment. Correct?

3 A. Yes.

4 Q. Property taxes that would be associated with
5 that investment?

6 A. Yes.

7 Q. Depreciation expense that would be associated
8 with that investment?

9 A. Yes.

10 Q. Accumulated depreciation that would accumulate
11 during some period of time. Correct?

12 A. Yes.

13 Q. And accumulated deferred income taxes. Right?

14 A. Yes.

15 Q. Okay. By the way, the ISRS statute does not
16 differentiate between deferred tax liabilities and deferred tax
17 assets, does it? It just refers to accumulated deferred income
18 taxes?

19 A. I do not recall it breaking it out separately
20 into assets and liabilities, yes.

21 Q. Okay. I believe your testimony is -- correct me
22 if I'm mischaracterizing -- that if new net operating loss was
23 generated by Missouri-American in this ISRS period that we've
24 been talking about that Staff would offset it against ADIT; is
25 that correct?

1 A. We would certainly consider doing so. There are
2 some things you would look at in an audit in terms of how direct
3 is the tie between the ISRS plant additions and the NOL amounts
4 and so on. But as a general matter, if a company is incurring
5 and NOL during -- or generating an NOL during an ISRS period,
6 yes, Staff would consider inclusion of an appropriate amount in
7 rate base.

8 Q. So is it fair to say that net operating losses
9 in certain circumstances as you indicate are a legitimate offset
10 to ADIT for setting ISRS rates?

11 A. I would agree with that.

12 Q. Would you also agree that net operating losses
13 in those circumstances are also relevant revenue requirement
14 items of an ISRS proceeding?

15 A. They could be covered under the scope of the
16 items dealt with in an ISRS proceeding.

17 Q. Would you agree with me that during this ISRS
18 period no new revenue was generated by the ISRS plant
19 investment?

20 A. As a practical matter I would agree with that,
21 yes.

22 Q. As a matter of fact, we won't begin -- I say we,
23 Missouri-American won't begin generating any revenue from this
24 ISRS plant until the ISRS surcharge takes effect. Correct?

25 A. The ISRS plant additions will not be directly

1 reflected in Missouri-American's ISRS rates until such time as
2 the ISRS rates are eff-- become effective.

3 Q. Or in base rates?

4 A. Or in base rates. Yes.

5 Q. And as a result, customers have not paid any
6 income tax expense included in the revenue requirement
7 associated with the ISRS plant?

8 A. Until such time until as ISRS rates going to
9 affect?

10 Q. Yes?

11 A. Okay. No, that I would disagree with. The
12 normal accounting and ratemaking conventions are is that a
13 utility collects rates from customers amounts to cover its cost
14 and hopefully to earn a reasonable profit. As long as a utility
15 is earning a positive rate of return, positive return on equity,
16 again for accounting and ratemaking purposes it is assuming they
17 are fully recovering all costs on their books.

18 Now, their equity -- return on equity in
19 particular may be viewed to be too low or too high and that may
20 trigger a rate action, but in almost all instances there's no
21 question that a company is recovering its expenses from
22 customers on an ongoing basis even without new rates.

23 Q. So if I understand your response, customers are
24 not paying income tax expense related to the current ISRS plant
25 or ISRS period through an ISRS surcharge currently in effect.

1 Right?

2 A. Well, they have not been directly reflected in
3 an ISRS surcharge.

4 Q. Okay. But you believe they are getting it
5 somehow through their base rates that were established in a
6 general rate case. Right?

7 A. Well, they are getting a recovery of costs and
8 again hopefully some return through ongoing payments by
9 customers in rates. While the return on equity may fluctuate
10 over time based on new costs that a company incurs, it is still
11 assumed for fundamental accounting and ratemaking purposes that
12 the Company is recovering all of the costs on its books.

13 Q. But non of the ISRS plant that is the subject of
14 this case was in the Company's rate base at the time its last
15 base rates were set. Right?

16 A. That is correct.

17 Q. Okay. So if you just focus on the lack of
18 recovery of income tax expense through the current ISRS charge,
19 which relates to the prior ISRS case. Right?

20 A. I'm sorry. You may have lost me there. Can you
21 go back?

22 Q. Sure. If you are just focused on the recovery
23 from customers of the interest expense associated with the ISRS
24 plant through the ISRS surcharge, which was set in the last case
25 -- that's the only in effect. Right?

1 A. Right.

2 Q. No tax expense is being recovered from customers
3 currently?

4 A. For new ISRS plant additions?

5 Q. Yes?

6 A. Okay. Again, if you define recovery in rates as
7 meaning an item is explicitly included in rates through a
8 commission order through an ISRS or base rates, then your
9 assumption would follow through. Again, for purposes of
10 accounting for their financial results and for setting rates
11 that is not how recovery is measured.

12 Q. We're talking about a single-issue ratemaking
13 proceeding that is solely focused on certain revenue requirement
14 elements items associated with ISRS plant. Right?

15 A. Yes.

16 Q. And one of those items is income tax expense.
17 Right?

18 A. You are -- Missouri-American is seeking recovery
19 of income tax expense in this case.

20 Q. And once customers pay that income tax expense,
21 which will be sometime in the future when the ISRS surcharge is
22 increased as a result of this case, Missouri-American will be
23 accumulating deferred income taxes. Right?

24 A. Well again, I disagree with the premise that
25 customers are not paying for income taxes on new ISRS plant

1 additions right now as we speak.

2 Q. Well, what you are doing is borrowing revenue
3 from base rates and attributing it to income tax expense on ISRS
4 plant that just got put in place after the rate case. Right?

5 MS. SHEMWELL: Judge, asked and answered.

6 MR. ENGLAND: I don't believe it has been
7 answered, Your Honor.

8 JUDGE HATCHER: Overruled.

9 THE WITNESS: No. What I am assuming is again
10 that ongoing customer rate collections by Missouri-American
11 include -- are intended to basically provide them some amount of
12 profit, some amount of debt return and return on equity on all
13 of their investment as well as allow them to recover their
14 ongoing level of operating expenses. Again, using normal
15 accounting and ratemaking conventions I don't think there is any
16 reason to believe that Missouri-American is not fully recovering
17 all of its expenses incurred since the last ISRS period through
18 rates.

19 Now, depending on what has happened in terms of
20 all relevant factors as well as the ISRS plant additions, they
21 may -- their return on equity may be going down, but that's
22 different than saying they are not recovering accumulated
23 deferred -- or deferred income tax expense in rates.

24 BY MR. ENGLAND:

25 Q. In order to make that statement, however, you

1 are relying on the fact that it is collecting money pursuant to
2 base rates?

3 A. Well, and the prior ISRS case.

4 Q. Well, but that was based on prior ISRS plant
5 investment, which has its own income tax impact. Right?

6 A. Well, it has a separate income tax impact that's
7 only measured in ISRS proceedings.

8 Q. And it becomes cumulative as you stack ISRS
9 cases on top of each other until the next general rate
10 proceeding?

11 A. I think you're correct.

12 Q. Well, let me try this way. Let's focus on I
13 think your concluding remarks at Page 10 of your direct
14 testimony where you state that Missouri-American's position to
15 offset ADIT with net operating loss would result in an
16 overstatement of the ISRS rate base and ISRS customer rates and
17 fail to compensate customers for the capital they provide to
18 Missouri-American in rates on an ongoing basis due to ISRS plant
19 additions. Do you see that?

20 A. I do.

21 Q. So in order for that statement to be correct as
22 I mentioned a minute ago, you have to borrow from, take from
23 base rates that were set in the last commission rate case to
24 find the revenue customers have paid to support this capital
25 you're talking about. Right?

1 A. That would only be true if one accepted, I
2 think, the implicit definition of rate recovery that you have
3 suggested, which is an item has to be specifically and directly
4 included in rates before any customer rate recovery can assumed
5 and I disagree with that.

6 Q. Okay. Then you and I must disagree on the
7 notion of what a single-issue ratemaking proceeding is all
8 about. Would you agree?

9 A. I don't know that.

10 Q. Would you agree with me that customers will not
11 pay the annualized revenue requirement of the ISRS plant in this
12 case until -- fully pay it until approximately 13 or 14 months
13 from now?

14 A. Well, rates when they go into effect will
15 reflect all of the ISRS plant additions and associated cost
16 found to be reasonable. If your point is that a company can't
17 collect an annual level of rates until 12 months have passed,
18 yes. I would agree with that.

19 Q. Yeah. Basically whatever -- let's just your --
20 I say your -- Staff's revenue requirement, which is 8 million
21 something for purposes of this case. The Company is not going
22 to collect that. First of all, that is directly attributable to
23 ISRS plant in Staff's opinion. Right?

24 A. All of the costs that we're talking about here,
25 yes.

1 Q. Right. Okay. And we are not going --
2 Missouri-American is not going to collect that until the of the
3 first year the ISRS surcharge has been implemented?

4 A. Well, they will collect it throughout the year,
5 but the full amount will not be collected until 12 months. It
6 can be assumed to be not collected until 12 months after the
7 effective date of rates.

8 Q. On direct testimony Page 2 -- I believe I am
9 still in your direct, but let me double check. I don't think
10 I'm -- I am in the wrong testimony. Your rebuttal, please, Page
11 2, Lines 11 through 13.

12 Again I am paraphrasing, you state
13 Missouri-American has not generated any NOL during the ISRS
14 periods for the current and prior ISRS rate cases. And you
15 reference the Company's response to Staff Data Request 4. Do
16 you see that?

17 A. I do.

18 Q. And that is a correct paraphrasing of your
19 testimony there?

20 A. I don't disagree with it.

21 Q. Okay. Has the Company generated any revenue to
22 fund its accumulated deferred income tax amount that Staff has
23 in its case?

24 A. Well, as we've discussed a number of times, that
25 amount is not directly reflected in customer rates whether the

1 Company is earning an overall reasonable rate of return. Even
2 considering the new ISRS plant additions is a separate question.

3 Q. Are you familiar with the Company's response to
4 Staffs Data Request 6?

5 A. I'm sure I've looked at it.

6 Q. It is my understanding that the Company
7 represented among other things in that response that its net
8 operating loss carryforward for 2018 would have been \$7 million
9 lower if the ISRS investments in 2018 had not occurred. Does
10 that ring any bells?

11 A. I'm certainly aware of that general
12 representation by Missouri-American.

13 Q. Okay. In other words ISRS investments made in
14 2018 generated an additional \$7 million in Missouri-American's
15 net operating loss. Right?

16 A. No. I would disagree with that. Under a
17 hypothetical scenario where you did not make any --
18 Missouri-American did make any ISRS plant additions, then they
19 would have been able to use more NOL to offset ongoing taxable
20 income. However, that -- the difference between what you're
21 actually able to do with regard to the NOL and what you might
22 have done under a hypothetical situation is in my mind in no way
23 an increase to NOL, which would trigger the tax normalization
24 rules.

25 Q. Well, isn't it logical for me to assume that if

1 I have a certain level of non-ISRS plant in a 12-month period of
2 time that's generating accelerated -- or against which I'm
3 applying accelerated depreciation that creates a net loss and
4 then I add an additional amount of plant that is now ISRS plant,
5 I'm going to generate more accumulated depreciation and increase
6 that loss. Right?

7 A. I understand what you're saying in terms of a
8 hypothetical NOL increase amount, but the overall balance is
9 decreasing and that is what we think is key here.

10 Q. And that overall balance takes into effect net
11 operating losses associated with non-IRIS plant. Right?

12 A. Well, you would have under your theory a large
13 NOL generated in this ISRS period and last one from the non-ISRS
14 plant additions. So with all of these sizable imputed amounts
15 of ISRS generated -- I'm sorry -- generated NOL, I'm not sure
16 where you all are able to resolve by math why it's decreasing on
17 an overall basis over these ISRS periods, the NOL balance.

18 Q. Was that a yes or a no, Mr. Oligschlaeger?

19 A. All right. I'm going to have to ask you to
20 repeat the question.

21 MR. ENGLAND: And I'm going to have to ask the
22 reporter to do so, please.

23 COURT REPORTER: And that overall balance takes
24 into effect net operating losses associated with non-IRIS plant.
25 Right?

1 . ENGLAND: Your Honor, I'm not sure that was my
2 question. I'm trying to decide in my mind if I can recreate
3 what I asked and save everybody.

4 BY MR. ENGLAND:

5 Q. I thought my question had to do with the notion
6 that you have a certain amount of non-ISRS plant generating
7 accelerated depreciation adding to a net loss. And then you add
8 ISRS plant on top of that. That's going to create additional
9 accelerated depreciation that is only going to increase the
10 loss. I think I was asking doesn't that make sense or isn't
11 that logical. My question, I'll rephrase it that way.

12 A. Okay. Well, I understand the logic used by
13 Missouri-American to create what I can only call a hypothetical
14 NOL amount related to ISRS plant additions, but your overall
15 balance of NOL is steadily going down meaning all of your tax
16 deductions can be taken currently and you are receiving the
17 resulting cashflow and financial benefits of those tax
18 deductions from customers currently.

19 Q. So Staff made no effort to parse out from the
20 existing net loss carryforward that portion of which is related
21 to accelerated depreciation on non-ISRS plant versus that
22 portion related to ISRS plant. Right? That's a simple yes or
23 no I would think?

24 A. I think we have made perhaps some rough
25 calculations informally, but in the record, no.

1 Q. Sticking with your rebuttal testimony on Page 3,
2 Lines 11 through 15, you indicate that Staff has not found any
3 support for MAWC's contention that failure to reflect a rate
4 base offset for net operating loss could lead to an IRS code tax
5 normalization requirement violation. Do you see that?

6 A. I do.

7 Q. And you reference code sections and private
8 letter rulings that were cited in Mr. Wilde's testimony.
9 Correct?

10 A. I did.

11 Q. At the bottom of Page 3 you quote from one of
12 the Internal Revenue code sections. That quote is continued on
13 to Page 4 and one of the conclusions you draw among others is
14 that the IRS specifies that net operating losses may be relevant
15 when a utility is unable to reflect all of its available
16 accelerated depreciation tax deductions on its tax returns
17 during a rate case period thus creating a new net operating
18 loss. Right?

19 A. Yes.

20 Q. I want to emphasize on the provision that you
21 stated, thus creating a new NOL. My question to you is where in
22 the quoted section does that language "new NOL" appear?

23 A. Well, I am certainly not directly quoting from
24 that section, but my basis is the bolded language on Page 3,
25 starting on Line 3: Results in a net operating loss

1 carryforward as determined under Section 172 to the years
2 exceeding such taxable year, which would not have arisen -- and
3 that's the part I think related to new generated NOLs. And then
4 in parentheses my testimony quotes the code as saying, or an
5 increase in such a carryforward which would not have arisen,
6 which I characterize as meaning when a company has an existing
7 NOL amount on its books and that amount is increasing due to a
8 failure to be able to take all of the normal accelerated
9 depreciation tax benefits.

10 Q. So that is your interpretation. You'd agree
11 with me that there is no reference to "new NOL" in this quote.
12 Correct?

13 A. I would agree.

14 Q. And you don't think that the first part of that
15 whole language where it talks about net operating loss
16 carryforward to a year succeeding such taxable year, which would
17 not have arisen would just be the net loss carryforward
18 regardless of whether it increases or decreases?

19 A. I read this as indicating that whatever actions
20 may be necessary in regard to the NOLs for tax normalization
21 purposes it is triggered when a company cannot take all
22 accelerated depreciation tax deductions normally available to
23 it. Instead has to carryforward those benefits to succeeding
24 years.

25 Q. Would you agree with me the use of the word "or"

1 implies that there are two different scenarios there? Two
2 different situations?

3 A. I would agree and I think I discussed both
4 scenarios in my testimony.

5 Q. And you think the first scenario was where the
6 net operating loss arises in the relevant period?

7 A. When one first arises in the relevant period,
8 yes.

9 Q. So that would negate the use of the word
10 carryforward. Doesn't that imply that it's being carried
11 forward into that year from a prior year?

12 A. No. What this means is if the amount of the tax
13 deductions normally available to the company cannot be currently
14 deducted due to being in an NOL situation. Those amounts can be
15 carried forward to succeeding years to the extent there are
16 taxable income in the succeeding years.

17 Q. Do you have any private letter rulings or other
18 IRS section references that support your interpretation of this
19 particular section?

20 A. Well, based on my review of those attached to
21 Mr. Wilde's testimony, my interpretation is my -- how I'm
22 characterizing this is not inconsistent with how the IRS ruled
23 in each case.

24 JUDGE HATCHER: Mr. England, I hate to
25 interrupt. Are you at a stopping point or close to a stopping

1 point? I only ask it is about a quarter after 12:00. I
2 definitely want to take a break to get everyone a chance to use
3 the restroom and then also I want to discuss lunch with the
4 parties.

5 MR. ENGLAND: Are you buying?

6 JUDGE HATCHER: I wish I was.

7 MR. ENGLAND: I guess no. Yeah. I'm trying to
8 think if we could wrap at least Mr. Oligschlaeger up in the next
9 15 minutes or not. I understand the concerns for a break for
10 everyone.

11 JUDGE HATCHER: Madam, court reporter could you
12 go another 15 minutes?

13 COURT REPORTER: Yes, for sure.

14 MR. ENGLAND: Let's give it a try. I'll try to
15 wrap this up.

16 BY MR. ENGLAND:

17 Q. Let's talk about there's five letter rulings
18 that were attached to Mr. Wilde's testimony. Correct?

19 A. Yes.

20 Q. And you apparently distinguished these letter
21 rulings because they involve fact situations that are different
22 than what we are dealing with here. For at first you say that
23 all of the taxpayers in those letter -- I emphasize the word
24 "all" of the taxpayers -- were generating NOL amounts. And of
25 course Missouri-American in your opinion is not currently

1 generating any NOL. Right?

2 A. That's correct.

3 Q. I've looked at those returns -- excuse me --
4 letter rulings and I would grant you that in the third and the
5 fifth, if you will, there is a reference to a generation of a
6 net operating loss in the test period, if you will, but I did
7 not find that evident in the first, second, and third private
8 letter ruling. Can you show me where they talk about the
9 taxpayer generating new NOL amounts?

10 A. Yes. That will take a little bit of time.

11 MR. ENGLAND: Your Honor, maybe it would be best
12 to take the lunch break and allow Mr. Oligschlaeger to highlight
13 that. We could proceed after lunch. Does that sound all right?

14 JUDGE HATCHER: That sounds like a great idea.
15 Let's take a lunch break. It's 12:15 now, until 1:30. Sounds
16 good. Let's go off the record.

17 (OFF THE RECORD.)

18 JUDGE HATCHER: All right. Let's go back on the
19 record after our lunch break. Again, we are in the middle of
20 cross-examination by Missouri-American Water Company of Mark
21 Oligschlaeger and he is getting ready to answer a question.
22 Mr. England or Mr. Oligschlaeger, whoever would like to --

23 THE WITNESS: I can go ahead and respond.

24 BY MR. ENGLAND:

25 Q. Yeah. I heard the reporter read back my

1 question. I may have been misspoken I said first, second, and
2 third and it maybe should be first, second, and fourth of those
3 five.

4 A. Okay. Well, I'll start with the first one,
5 attachment JRW-1. The reason I interpreted this as involving a
6 utility generating NOL as opposed to using it is from a sentence
7 near the bottom of the first page of the schedule. The sentence
8 reads: Taxpayer argued that the ADIT balance should be reduced
9 by the amounts that taxpayer calculates did not actually defer
10 tax due to the presence of the NOL. So that's -- if you like
11 for me to continue on to the other ones, I could do so.

12 Q. We're talking about JRW-1, Page 1 of 4?

13 A. Yes.

14 MR. ENGLAND: May I approach the witness and
15 look over his shoulder and just see where he is reading?

16 JUDGE HATCHER: Yes, please.

17 THE WITNESS: Right there.

18 BY MR. ENGLAND:

19 Q. Same thing I had highlighted. The way I read
20 it, it talks about the presence of a net operating loss
21 carryforward, that's the NOLC. But I don't understand or see
22 where they're alleging or arguing that there was an increase in
23 the amount during the relevant period.

24 A. Well, at least in my reading that was implicit
25 when it states that the taxpayers calculated did not actually

1 defer tax due to the presence of the NOLC. And you know, there
2 are other reasons why I believe it is most likely that this
3 particular PLR deals with generation of NOLC rather than use,
4 but I could go into that if you like.

5 Q. Well, if you can -- I'm just interested in a
6 cite to language that would say that, not necessarily your
7 belief based on the totality of the ruling.

8 A. Okay.

9 Q. Are there any other quotes?

10 A. Not from the first one.

11 Q. I think the next one would be JRW-2, please?

12 A. That is correct. If you turn to Page 3 of 6,
13 the top -- the very first sentence on that page reads: Taxpayer
14 did not have an ability to reduce its first three quarterly year
15 for estimated tax payments for the anticipated overpayment of
16 Year 3 estimated taxes because parent and taxpayer expect to
17 incur net operating losses in Year 4. And I'll stop there.

18 Now there is a further sentence, the second
19 sentence in the third paragraph on the page. Parent reported a
20 consolidated NOL and taxpayer deducted the additional first-year
21 depreciation resulting in an NOL on a standalone basis.

22 Q. And that tells you that taxpayer was generating
23 incrementally more net operating losses in Years 1, 2, 3 and 4
24 or just Year 4?

25 A. Well, I am not sure if I have analyzed it quite

1 to that point. I mean the last sentence I read to you deals
2 with Year 3 and I interpret this as basically stating because
3 the taxpayer deducted the additional first-year depreciation,
4 that resulted in an NOL. To me that is best interpreted as a
5 generation of NOL because of the additional first-year
6 depreciation.

7 Q. Of course, you know, Missouri-American's
8 argument is they are generating an NOL as a result of this ISRS.
9 I realize you don't agree with that, but Missouri-American
10 believes they are. Correct?

11 A. Yes. And none of these PLRs to me seem to deal
12 with ISRS type --

13 Q. I'll get to that --

14 A. -- ratemaking mechanisms.

15 Q. -- in a minute. Let's finish up on --

16 A. Okay.

17 Q. I guess it would be --

18 A. Is that Number 4?

19 Q. Yes?

20 A. All right. For Schedule JRW-4, Page 1 of 5, the
21 third paragraph, several sentences down it states: Taxpayer
22 takes accelerated depreciation including bonus depreciation
23 where available and for each year beginning in Year A and ending
24 in Year B taxpayer individually as well as the consolidated
25 return file by parent has or expects to produce a net operating

1 loss.

2 MS. SHEMWELL: Pardon me just a moment. Was
3 that Page 1?

4 THE WITNESS: Page 1 of 5.

5 MS. SHEMWELL: Thank you.

6 BY MR. ENGLAND:

7 Q. And that, in your opinion, means he's -- excuse
8 me -- taxpayer is incurring in the aggregate an ever-increasing
9 net operating loss year over year?

10 A. Yes. I view in this context "produce" to be
11 synonymous with "generate".

12 Q. You also distinguish the private letter rulings
13 because they involve general rate cases or formula rate cases
14 and not a single-issue ratemaking proceeding such as ISRS.
15 Right?

16 A. That's -- based on my reading none of them seem
17 to be a single-issue ratemaking proceeding.

18 Q. Have you performed any independent research to
19 see if there is a private letter ruling on this issue in the
20 context of a single-issue ratemaking proceeding?

21 A. Not independently. I would expect the Company
22 to produce that if such a thing existed.

23 JUDGE HATCHER: If I could interrupt.
24 Mr. Oligschlaeger, would you tell me the highlighted lines on
25 Page 1 again?

1 THE WITNESS: The last one, JRW-4?

2 JUDGE HATCHER: Yes.

3 THE WITNESS: Okay. Let me count them. The
4 third paragraph on the page, the paragraph that starts:
5 Taxpayer is a regulated public utility. If you go down to what
6 I believe to be the fourth sentence, which starts: Taxpayer
7 takes accelerated depreciation, comma, including bonus
8 depreciation, that entire sentence.

9 JUDGE HATCHER: Thank you.

10 Mr. England?

11 MR. ENGLAND: Thank you.

12 BY MR. ENGLAND:

13 Q. I think your answer was no, you haven't done any
14 independent research to see if there is a private letter ruling
15 involving a single-issue ratemaking?

16 A. That's correct.

17 Q. Okay. Would you agree with me or at least would
18 it be your opinion that this appears to be a case of first
19 impression then as far as the IRS is concerned?

20 A. You mean the issue that has arisen in the last
21 two ISRS cases?

22 Q. Yes.

23 A. To my knowledge, yes.

24 Q. With reference to the private letter rulings
25 attached to Mr. Wilde's testimony, would you agree with me that

1 the failure to offset ADIT with net operating losses at least in
2 the context of a general rate case or formula rate case would be
3 a violation of the normalization rules?

4 A. These documents seem to suggest that. Part of
5 the standard language in every PLR is it's not to be taken as
6 precedential for other situations. So with that caveat though,
7 I think it -- that there certainly have been some PLRs would
8 seem to say, yes, you need to take into account an NOLC in order
9 to be in compliance with the normalization rules.

10 Q. One of my witnesses said to me over the lunch
11 hour that he thought you -- he thought he heard you say that
12 Missouri-American is not currently using all of its available
13 deduction -- excuse me. Is using all of its available
14 deductions; is that right?

15 A. Well, to be extremely accurate and technical
16 Missouri-American is accounting for its 2018 financial results
17 upon the expectation that it will be able to use all of its
18 available deductions.

19 Q. But I thought the evidence -- or at least the
20 information that Missouri-American provided and you and
21 Ms. Lyons referenced indicates that there is a net loss
22 carryforward that will extend at least through 2018 and into the
23 end of 2019. Right?

24 A. Well, that's true. We have stated what our
25 position is is accurate because Missouri-American is able to

1 take the full deductions for accelerated depreciation and repair
2 allowance, or is projected to be able to take them for 2018,
3 have a positive amount of tax -- taxable income, which can then
4 be offset by use of the prior NOLC. So if you follow the math,
5 yes. They are using the full amount of the deduction.

6 Q. That is what I don't understand because my math
7 would tell me that if they are using all of the deductions
8 available to them including the loss carryforward that there
9 wouldn't be any more loss carryforward at the end of this year?

10 A. Well, I mean -- okay. They are able to carry
11 the remainder of the NOLC to at least some future years. I
12 don't think our point is premised upon the belief that it has to
13 be all exhausted 2018 or 2019.

14 Q. So the fact that there is some loss being
15 carried over from '18 to '19 would indicate they weren't able to
16 use all of the deductions available to them?

17 A. I disagree. They were for -- as they relate to
18 the 2018 ISRS plant additions, we believe they were.

19 Q. How do you distinguish the loss -- losses
20 related to ISRS versus loss related to the rest of the Company's
21 non-ISRS operations? How do you parse that?

22 A. We haven't attempted to parse it because we
23 believe when the overall balance of NOL is decreasing you do not
24 need to separate that out to rate components.

25 Q. Let me ask you this: Would the carryover loss

1 at the end of 2018 be the same if Missouri-American had not made
2 any investments in ISRS plant during that year?

3 A. All other things being equal, presumably their
4 taxable income would be higher and they could have used more of
5 the prior generated NOL to offset that amount.

6 Q. So I think what you are saying is that their
7 carryover loss of 2018 would have been -- at the end of 2018,
8 would have been less because they were able to take additional
9 -- excuse me -- would have been less if they had not invested in
10 ISRS plant.

11 MS. SHEMWELL: Judge, this is a requiring an
12 assumption of what their net operating loss would be in 2018 and
13 they don't file that until October 2019. They don't file a tax
14 return that is showing what that loss is. So it's unknown
15 whether or not they will have you a loss and if so, how much it
16 will be.

17 MR. ENGLAND: That loss amount is stated in a
18 table in I believe, Ms. Lyons' testimony. Now, admittedly it's
19 proje-- well, excuse me -- 2018 will be actual I would assume.
20 2019 would be projected. I'm talking about 2018 and whether
21 that loss that was reported at the end of 2018 would have been
22 less had they not been invested in ISRS.

23 MS. SHEMWELL: And you haven't stated a loss in
24 2018 in your tax return because you're not going to file it for
25 almost a year.

1 MR. ENGLAND: I am not talking about -- I'm
2 talking about the loss that we reported on our books and records
3 and Staff has put into their testimony that they claim is
4 continuing to go down on the aggregate.

5 MS. SHEMWELL: This testimony or your rate case.

6 MR. ENGLAND: You know, I'm really not -- Ms.
7 Shemwell's not my witness.

8 MS. SHEMWELL: I'm going to object.

9 MR. ENGLAND: I don't think --

10 JUDGE HATCHER: Let's hold on. I'm fine
11 proceeding with estimates. I believe that will be reflected in
12 the record that this is an answer based on estimates. But if
13 you could point out the numbers in Ms. Lyons' testimony so we
14 can all follow along, I think that might be helpful.

15 MR. ENGLAND: I believe it's the top half of
16 Page 6 of her direct testimony.

17 JUDGE HATCHER: Mr. England, would that be
18 Schedule KL-R1 attached to the back?

19 MR. ENGLAND: No. This is incorporated in her
20 testimony on Page 6.

21 JUDGE HATCHER: I'm sorry.

22 MR. ENGLAND: I'm sorry. That was my mistake.
23 That was her rebuttal testimony.

24 JUDGE HATCHER: Okay. Go ahead.

25 MR. ENGLAND: Now, I'm trying to remember my

1 question.

2 BY MR. ENGLAND:

3 Q. Would the loss carryforward on December 31st,
4 2018 have been less than as shown in the table in Ms. Lyons'
5 testimony if the Company had not invested in the ISRS plan?

6 A. In the hypothetical scenario where the Company
7 had invested in no ISRS plant during, I guess, this ISRS period
8 or the last one, its taxable income would be higher and
9 therefore it would be able to use more of the accumulated NOL
10 generated in prior years and accordingly under those assumptions
11 the balance of the NOLC would be lower at the end of the ISRS
12 period.

13 Q. Thank you.

14 A. Yes.

15 Q. Just a couple of more questions,
16 Mr. Oligschlaeger. On Page 9 of your direct testimony at Lines
17 10 through 13 you ask yourself the question: Is Staff's
18 position on the NOL issue -- excuse me. If Staff's position on
19 the NOL issue is adopted in this case, could that potentially
20 lead to a violation of the normalization requirements for
21 accelerated depreciation benefits in the code. I read your
22 answer, but I am not sure I understood if you really answered
23 the question.

24 So let me ask you this: In your opinion, is
25 there a potential tax normalization violation if the Commission

1 adopts Staff's position in this case?

2 A. I would view that likelihood as being very
3 unlikely that the IRS would rule in Missouri-American's -- in
4 favor of Missouri-American's position on this issue, but
5 obviously I cannot guarantee any such result.

6 Q. So you say there is a chance?

7 A. A nonzero mathematical chance. Yes.

8 Q. And as far as regulatory policy is concerned, if
9 there is a potential tax normalization violation, do you think
10 it is good regulatory policy to play chicken with the IRS code?

11 A. I think that in part depends on each parties and
12 ultimately the Commission's perspective on the likelihood of
13 such an adverse action taking place and I view it as very
14 unlikely.

15 Q. But a possibility that it could. Correct?

16 A. I cannot preclude that there is a possibility.

17 Q. And then a possibility that Missouri-American
18 could lost its accelerated depreciation?

19 A. I assume there is a nonzero mathematical
20 possibility of that as well.

21 MR. ENGLAND: Thank you. No other questions.

22 JUDGE HATCHER: Thank you. No questions from
23 the bench.

24 Any redirect, Mr. Johnson?

25 MR. JOHNSON: Yes. Thank you, Judge.

1 REDIRECT EXAMINATION BY MR. JOHNSON:

2 Q. Mr. Oligschlaeger, I am going to ask you some
3 questions about Mr. England's line of questions. Some of these
4 a while ago, so I'll do my best to spur your memory. When
5 Mr. England asked you some questions regarding a potential
6 finding of a tax normalization violation I believe you just went
7 through this with Mr. England but do you believe that is likely
8 to occur?

9 A. No, for the reasons stated in my testimony there
10 appears to be no support certainly from PLRs or similar
11 documentation and plus our reading of the code in the language
12 that would control for this does not at all suggest that
13 Missouri-American's position on NOL is valid in this case.

14 Q. Mr. England also asked you some questions
15 regarding the offsetting of deferred tax liabilities with
16 deferred tax assets in regard to setting or including a level of
17 ADIT within customer rates in a general rate case?

18 A. Yes.

19 Q. Did Staff do that in Missouri-American's last
20 rate case?

21 A. Yes. We recommended that Missouri-American's
22 rates be set reflecting among other things the existence of a
23 deferred tax asset for NOL amounts.

24 Q. And I believe Mr. England asked you about a
25 number referred to in Staff's workpapers. Do you believe those

1 workpapers are relevant to this proceeding?

2 A. You're going to have to refresh my memory what
3 you are talking about.

4 Q. I believe he was asking you about a level of
5 ADIT that may have been contained in Staff workpapers. I
6 believe you responded that the case was settled via black-box
7 settlement. Does that spur your memory?

8 A. Okay. That helps, so could you repeat the
9 question.

10 Q. In your opinion does the level of ADIT that may
11 have been reflected in Staff's workpapers hold any relevance to
12 this matter?

13 A. No, because of the provision in the stipulation
14 of the last case that ISRS recovery would be restricted to
15 amounts associated with ISRS plant additions made after January
16 1, 2018.

17 Q. Mr. England also asked you about the ISRS
18 statute stating that it was only concerned with identifying
19 incremental revenue requirements associated with ISRS
20 assessment. So you remember that?

21 A. Yes.

22 Q. I believe he asked you specifically regarding
23 the inclusion of a deferred tax asset and whether -- he asked
24 you about the inclusion of a deferred tax asset within the ISRS
25 mechanism. Does Staff agree that an NOL amount can be tied

1 specifically to individual ISRS plant?

2 A. In general terms, no. If we were in the
3 specific circumstance of a company generating NOL during an ISRS
4 period that is something we would try -- we would have to try to
5 determine how to or whether it was even possible to assign or
6 allocate such an amount to the single-issue rate element.

7 Q. And in your opinion is Missouri-American
8 currently generating an NOL amount in the current ISRS period?

9 A. No.

10 Q. How did you come to this conclusion?

11 A. Just looking at the -- I guess the response to
12 the data request attached to Ms. Lyons' testimony where it
13 shows the balance of the NOL decreasing over time. It is being
14 used, not generated.

15 Q. Mr. England also asked about the Company's
16 response to DR-6 from Staff, which he indicated showed that the
17 level of NOLC used by the Company in 2018 would have been higher
18 if no -- excuse me if no ISRS investment had been paid by the
19 Company. Do you remember that?

20 A. I do.

21 Q. Does Staff agree that a delay in the use of
22 prior NOLC amounts is a deduction -- is an increase to net
23 operating loss?

24 A. No. Not at all. It's -- increases in NOL
25 result when you cannot use all of the otherwise valid tax

1 deductions currently because you don't have enough taxable
2 income to take them. Once you start using it, you can use all
3 of the tax deductions currently the Company on their income tax
4 return and the Company collects those amounts from customers and
5 obtains cash flow or what they refer to as an interest-free loan
6 as a result. So as long as the NOL amount -- any NOL amount
7 that existed in the past is decreasing there is not, in my
8 opinion, an normalization problem for the utility.

9 Q. Hypothetically, in your opinion, if
10 Missouri-American currently did not have an NOL carryforward
11 amount on its books, do you believe Missouri-American would
12 generate an NOL -- a new NOL amount during this ISRS period?

13 A. No.

14 Q. Mr. England also asked if Staff had made an
15 effort to parse out a portion of net operating loss carryforward
16 amounts that related to the ISRS plant additions in this case.
17 Do you remember that?

18 A. I do.

19 Q. Does Staff believe portions of prior NOL
20 carryforward amounts are related to plant in this ISRS
21 proceeding?

22 A. No. Given the Tax Cuts and Jobs Act and its
23 passage in early 2018, Missouri-American and I believe utilities
24 general, stopped accumulating or generating NOL at that time and
25 shifted to the mode of using it instead.

1 Q. Mr. England also ask you a few questions
2 regarding whether Missouri-American was currently utilizing all
3 of its available tax deductions. Can a taxpayer use an NOL
4 carryforward amount from a prior period before it applies all of
5 its available deductions in that current tax year?

6 A. No. And I think that's indicated in the
7 schedule attached Mr. Wilde's rebuttal testimony.

8 Q. All right. Mr. Oligschlaeger, finally I believe
9 when Mr. England was asking you about the various public letter
10 rulings on the first public letter ruling that you cited -- or
11 that he asked you about -- you stated that there were other
12 general reasons that you believed the PLR on Schedule JRW-1
13 attached to Mr. Wilde's direct testimony dealt with a generation
14 of a new NOL amount.

15 A. Okay. And certainly my rationale will apply to
16 all the PLRs, not just the first one. First, the -- all of
17 these PLRs were issues within a time period in which regulated
18 utilities were allowed to take accelerated depreciation and
19 bonus depreciation deductions, which I will generalize caused
20 Missouri-American and I think many other utilities not only in
21 Missouri, but across the nation, to be in a position of
22 generating NOL. As long as a company is taking bonus -- did
23 take bonus depreciation in past years I would find it extremely
24 highly unlikely that they would be also in a position of using
25 prior NOL.

1 Secondly, if these companies were actually in
2 the position that Missouri-American currently is, which is using
3 prior NOL, but if they were to assert that there had been a
4 delay in their ability to use it for what reason, I would expect
5 that claim to be stated clearly within the PLR and for the IRS
6 to rule on that specific issue in a similar manner to which
7 Missouri-American is making that specific claim or preparing to
8 in its PLR request to the IRS.

9 Q. Thank you, Mr. Oligschlaeger. I have no further
10 questions.

11 JUDGE HATCHER: Thank you. You are dismissed.
12 Please call your next witness.

13 MR. JOHNSON: Thank you. Staff calls Karen
14 Lyons.

15 JUDGE HATCHER: Please raise your right hand.
16 (Witness sworn.)

17 JUDGE HATCHER: Mr. Johnson.

18 KAREN LYONS having been first duly sworn testified as follows:

19 DIRECT EXAMINATION BY MR. JOHNSON:

20 Q. Could you please state your name and spell your
21 last name for the record?

22 A. My name is Karen Lyons. The last name is
23 spelled L-Y-O-N-S.

24 Q. And how are you employed and in what capacity?

25 A. Auditor with the Missouri Public Service

1 Commission.

2 Q. Did you prepare or cause to be prepared direct
3 and rebuttal testimonies in this marked as Exhibits 6 and 7?

4 A. Yes.

5 Q. Do you any changes or corrections to that
6 testimony?

7 A. I do. Just one on Page 2 of my direct
8 testimony. Line 15, a number reported there is a 827387. It
9 should be 827383.

10 Q. And with that correction are the answers
11 contained in your testimony true and correct to the best of your
12 knowledge and belief?

13 A. They are.

14 Q. And if I were to ask you those same questions
15 today would your answers be the same?

16 A. Yes.

17 MR. JOHNSON: Judge, I move for the admissions
18 of Exhibits 6 and 7 into evidence.

19 (WHEREIN; Staff Exhibits 6 and 7 were offered
20 into evidence.)

21 JUDGE HATCHER: Thank you. Are there any
22 objections to the admission of the direct testimony and rebuttal
23 testimony of Karen Lyons marked as Exhibits 6 and 7.

24 MS. SHEMWELL: No.

25 MR. ENGLAND: No objection.

1 JUDGE HATCHER: Seeing none, they are both
2 admitted.

3 (WHEREIN; Staff Exhibits 6 and 7 were received
4 into evidence.)

5 JUDGE HATCHER: Please continue.

6 MR. JOHNSON: Thank you, Judge. I tender the
7 witness for cross-examination.

8 JUDGE HATCHER: All right. Ms. Shemwell?

9 MS. SHEMWELL: Thank you.

10 CROSS-EXAMINATION BY MS. SHEMWELL:

11 Q. Good afternoon, Ms. Lyons.

12 A. Good afternoon.

13 Q. Ms. Lyons, do you know the difference between
14 the formula ratemaking and a cost of service ratemaking case?

15 A. Well, I mean I haven't had much -- quite frankly
16 haven't had my experience with the formula ratemaking, but I
17 know that is something similar to what they do with SBP.

18 Formula ratemaking and the cost of service takes into all of the
19 costs, revenues, investments to develop the revenue requirement.

20 Q. Do you know if FERC uses formula rates?

21 A. Yes, I believe they do. Yes.

22 Q. Do you know if those are individual to each
23 utility?

24 A. Yes, they are.

25 Q. But Missouri is a cost of service ratemaking

1 state?

2 A. That is correct.

3 Q. Not a formula --

4 A. That is correct.

5 Q. Thank you. And the ISRS is a very limited type
6 of, case, a single-issue ratemaking case, that is outside of a
7 general rate case. That does not take into account all of the
8 expenses and costs?

9 A. Yes.

10 Q. And income?

11 A. Yes. It's limited to the plant, the
12 depreciation, the deferred taxes, federal/state taxes, property
13 taxes. But it does not take into account other items, other
14 cost of service such as payroll and that type of thing.

15 Q. Mr. England was -- I use the word -- complaining
16 that Missouri-American Water did not get to recover the
17 infrastructure investment it has made since its last rate case
18 until after it made the investment?

19 A. Yes.

20 Q. But the ISRS being an exception allows the
21 Company to recover that again before it files its next rate
22 case. So it is getting recovery of infrastructure more quickly
23 than it would absent the ISRS?

24 A. That is correct.

25 Q. In your calculation on Page 6, when you are

1 calculating --

2 A. Of my direct?

3 Q. I'm sorry. Your direct. That we refer to. Can
4 you know for certainty what the net operating loss that
5 Missouri-American Water will report on its taxes for 2018 when
6 it files in October 19th?

7 A. Well, first of all it's Staff's position that
8 they will not have a net operating loss in 2018.

9 Q. Okay.

10 A. This table here identifies their net operating
11 loss carryforwards, which is there prior net operating losses.
12 I think Mr. Wilde even stated on -- when he was testifying
13 earlier that they anticipate having a zero taxable income in
14 2018 by offsetting their taxable income with some of this net
15 operating loss carryforward from the prior years. In order to
16 do that that tells you they have had to been able to use all
17 their deductions. And if they are using all of their deductions
18 then they cannot have a net operating loss in 2018.

19 Q. Thank you. I think that's all I have for you.
20 Thank you, Ms. Lyons.

21 JUDGE HATCHER: And Mr. England, any
22 cross-examination?

23 MR. ENGLAND: Yes, sir. Thank you.

24 CROSS-EXAMINATION BY MR. ENGLAND:

25 Q. Good afternoon Ms. Lyons?

1 A. Good afternoon.

2 Q. I think one of the questions Ms. Shemwell just
3 asked you had to deal with whether or not you knew what the
4 deferred -- excuse me net -- loss carryover will be on
5 Missouri-American's 2018 tax return. Do you recall that?

6 A. I don't believe she was asking me about the
7 carryover. I think she was asking me what net operating loss
8 was being generated.

9 Q. Okay. Thank you. Do you know what amount of
10 accumulated deferred income taxes Missouri-American will have on
11 its tax return for the same period?

12 A. No.

13 Q. Okay. In your direct testimony, Page 3 please.
14 Lines 16 through 18 you state: A utility's deferred tax reserve
15 balance represents in effect a net prepayment of income taxes by
16 a company's customers in rates prior to actual payment to the
17 taxing authorities. Do you see that?

18 A. Yes.

19 Q. Can I assume that when you refer to the deferred
20 tax reserve balance that's the same thing as what we've been
21 calling the accumulated deferred income taxes?

22 A. Yes.

23 Q. What do you mean by net prepayment?

24 A. Well, with house staff develops its -- all
25 parties -- develops its income tax expense. We are including a

1 level of income tax expense that is based on a normalized level.
2 So it is including -- it is stating essentially that the Company
3 was able to collect this income tax expense as if they did not
4 have any deductions. So in other words, their income tax
5 expense that they actually are paying to the IRS is something
6 less than what is built into rates.

7 Q. Well --

8 A. So they're actually recovering some type of
9 expense from customers collected in rates.

10 Q. Okay. But I guess -- and maybe we will get to
11 that a little later. I was more concerned with the word "net".
12 Net to me assumes that you're netting two or more things that go
13 in different directions together. Do you see where I'm going
14 with this?

15 A. I do. And I just think in general it is
16 referring to the deferred tax -- the deferred taxes that are --
17 the deductions that the Company is able to take and then the
18 income tax that is related to that.

19 Q. So the net netting terminology you are using
20 here doesn't refer to the netting of, say for example, deferred
21 tax liabilities and deferred tax assets?

22 A. No.

23 Q. Okay. Would you agree with me that deferred tax
24 liabilities and deferred tax assets are both components of
25 accumulated deferring income tax?

1 A. Yes. And if I can, I would like to restate that
2 because a deferred tax reserve is a combination of deferred tax
3 liabilities and assets.

4 Q. Okay. Thank you. At Page 4 of your direct
5 testimony beginning with Line 9 -- excuse me -- I think
6 continuing on through 15 you explain how Missouri-American
7 calculates the net operating loss it uses to offset the deferred
8 tax liability. Do you see that?

9 A. Yes.

10 Q. And you state that Missouri-American sums the
11 tax timing difference related to repairs and accelerated
12 depreciation with depreciation expense and interest expense and
13 then subtracts those reductions from zero. Right?

14 A. That's correct.

15 Q. You say zero represents the revenue that
16 Missouri-American has yet to recover in regard to this ISRS
17 investment?

18 A. As far as their hypothetical scenario, yes.

19 Q. Well, it is not hypothetical, is it? I mean
20 we're not going to recover any revenue in this ISRS case until
21 the Commission issues its decision and we implement the
22 surcharge pursuant to that.

23 A. Well, and I would state that the utility is
24 recovering all of its investment revenue and expenses until such
25 time rates are changed. Now, if you're talking about in

1 isolation, you know, all other matters being a equal then, yes,
2 that revenue for ISRS has not been recovered. But they are
3 recovering all their costs until rates change.

4 Q. And that's the purpose of a single-issue
5 ratemaking proceeding, if you will, is to examine factors in
6 isolation, is it not? It's not all relevant factors?

7 A. For this particular ISRS that is correct. It is
8 just the items outlined in the statute.

9 Q. So the return on investment, the depreciation
10 expense, the property taxes, the income tax expense, all of that
11 that goes into the revenue requirement associated with an ISRS
12 doesn't get collected until sometime after the proceeding?

13 A. That's correct.

14 Q. I guess your answer would be the same that we
15 got from Mr. Oligschlaeger earlier that you would argue
16 customers have prepaid tax expense for taxes related to the ISRS
17 investment through their general base rates -- or excuse me,
18 their base rates that were set in their general rate case?

19 A. Well, they are certainly collecting income tax
20 right now, income tax expense in rates and they will collect an
21 additional amount of income tax at the end of this case.

22 Q. Right. But those income tax expenses that were
23 built into the last case presumably were based upon investments
24 and expenses that had occurred in the test period or at the end
25 of the test period December 31st, 2017. Right?

1 A. Yes, but those particular rates are set with the
2 idea that there is a relationship between the investment revenue
3 and expense and that relationship is assumed to continue until
4 rates are changed in a future rate case.

5 Q. That would be the case if we got from rate case
6 to rate case. Correct?

7 A. Yes.

8 Q. But we have a statute that provides for interim
9 recovery between rate cases for a specific revenue requirement
10 and that's the revenue requirement associated with ISRS
11 investments. Correct?

12 A. Yes, but I think the same thing would apply that
13 you're still recovering you rates. We're just isolating this
14 one item.

15 Q. Why would the -- why would the legislator
16 implement an ISRS statute if the intent was for companies to
17 recover -- to recover those ISRS investments in their general
18 rate case?

19 A. To allow the company to recover cost outside of
20 a rate case.

21 Q. Right. So you've calculated approximately \$9.2
22 million of deferred taxes that Staff proposes to offset rate
23 base on the premise that the customers have prepaid these taxes.
24 Right?

25 A. Yes.

1 Q. And that premise of prepayment is based upon
2 your notion that we get that money through base rates
3 established based on a test year ending in 2017?

4 A. Yes.

5 Q. Your explanation of how the Company or
6 understanding of how the Company calculated its net operating
7 loss is based upon Mr. LaGrand's Schedule BWL-2 attached to his
8 direct testimony; is that right?

9 A. I am not sure if I followed your question.

10 Q. You testified how you -- on Page 4 of your
11 direct, Lines 11 through 14, as to how the Company calculated
12 its net operating loss that it has used to offset deferred
13 income taxes. I'm asking is it your understanding or your
14 explanation here is basically a narrative explanation of what
15 appears in Mr. LaGrand's Schedule BWL-2?

16 A. Bear with me just a minute. I mean, it's based
17 off his workpaper. I'm not sure as we sit here today if this
18 Schedule BLW-2 includes that information. There it is. Yes, I
19 would agree.

20 Q. Okay.

21 MR. ENGLAND: If I may, Your Honor. I don't
22 know if this needs to be marked as an exhibit or not. I've
23 asked Mr. LaGrand to excerpt a portion of that schedule, blow it
24 up for the benefit of my eyes and add a total column. And I
25 would like to inquire of the witness on this. And I think it is

1 easier to follow rather than with trying to read the smaller
2 print and the other things that are going on in that seven-page
3 exhibit.

4 JUDGE HATCHER: Go ahead. I don't think it
5 needs to be an exhibit, but we'll see how it plays out.

6 MR. ENGLAND: Okay.

7 THE WITNESS: Yes, this is incredibly tiny if
8 you're asking me to look at that.

9 MR. ENGLAND: That's why I had him blow it up.

10 BY MR. ENGLAND:

11 Q. Okay. As you note the print is awfully small in
12 the actual schedule attached to Mr. LaGrand's testimony. What I
13 have tried to do is have him re-create the bottom half, if you
14 will, of that exhibit in larger print keeping the same line
15 numbers so we can reference numbers via line or column. And the
16 only other difference is that the far column to the right is a
17 total of the previous two columns 2018 and 2019.

18 I'd like you to take a look at the bottom
19 right-hand corner Line 73. There is a total deferred tax or NOL
20 of \$8,764,652. Do you see that?

21 A. Yes.

22 Q. And I believe that is the same amount of what
23 you refer to as NOL removed by Staff and shown in your updated
24 reconciliation Schedule KL-R1?

25 A. Yes. It is the rate base value. It's another

1 way to look at it.

2 Q. Okay. And then that translates into a revenue
3 requirement somewhere in the neighborhood of 800-plus thousand
4 dollars?

5 A. That's correct.

6 Q. Now, on the top part of this page of this
7 excerpt, if you will, Lines 43 through 61, would you agree, is
8 sort of an income loss calculation that Mr. LaGrand has
9 performed for the current ISRS application and the prior ISRS
10 case?

11 A. Yes.

12 Q. So first on Line 46 through 50 is an income loss
13 calculation for the current ISRS. And as you note in your
14 testimony the revenue is zero because no new ISRS rates have yet
15 been put into effect?

16 A. That's correct.

17 Q. However, on Line 53 there are revenues
18 associated with the prior ISRS case because those rates are in
19 effect?

20 A. That is correct.

21 Q. Right? Okay. So for purposes of Mr. LaGrand's
22 or Missouri-American's net operating loss calculation the
23 Company did not assume zero revenue, but in fact included
24 approximately \$4.25 million of revenue from the prior ISRS?

25 A. That is correct.

1 Q. Okay. Nevertheless, when you begin deducting
2 book tax depreciation difference as well as the other items
3 there, the Company is experiencing a net operating loss for both
4 '18 and '19 of a little more than \$34 million?

5 A. Yes.

6 Q. Okay. And that is the number -- excuse me --
7 yes. That is the number that Mr. LaGrand uses on his Line 71
8 applies a tax factor 25.4 percent to come up with the rate base
9 amount of \$8.7 million that we talked about earlier?

10 A. Yes.

11 Q. Okay. Above that is the deferred tax liability
12 on Line 69, total of 9 million 290 and some change?

13 A. Yes.

14 Q. That's the number that's in Staff's case.
15 Right?

16 A. Yes.

17 Q. Okay. The 8 million 764 is the number Staff
18 removed --

19 A. That's correct.

20 Q. -- or did not put into its case? Okay. I just
21 want to make sure you understand that these expenses that
22 Mr. LaGrand has itemized in his income/loss statement for
23 example depreciation expense, interest expense, pretax, income,
24 all are directly related to ISRS plant in this case?

25 A. Yes, or the ISRS plant from the previous case.

1 Q. Okay.

2 A. Yes.

3 Q. That is the second half. I agree. But we're
4 not -- there's no non-ISRS activity or non-ISRS expenses that
5 are put into this --

6 A. No.

7 Q. -- calculation?

8 A. No.

9 Q. Thank you. Now when I look at the development
10 of the deferred tax liability and the deferred tax asset it
11 appears the method albeit the numbers are different, the method
12 is similar in the way in which it is accumulated and then tax
13 affected to come up with a rate base amount. Would you agree
14 with me?

15 A. Yes.

16 Q. So would you agree with me then that at least
17 both of these numbers, the deferred tax liability and the
18 deferred tax asset, are hypothetical or assumed for purposes of
19 this case?

20 A. I would not.

21 Q. Which one is not hypothetical or are both of
22 them not hypothetical?

23 A. Well, your net operating loss is the
24 hypothetical. Staff does not consider deferred taxes
25 hypothetical.

1 Q. Where do you get the deferred tax liability
2 number?

3 A. That is -- this is -- deferred tax liability is
4 something that they -- that the utility will book. The net
5 operating loss was specifically created for this particular ISRS
6 in the previous ISRS and possibly the case before that, too.
7 I'm not quite sure on that one. But it was specifically created
8 to offset the deferred tax liability for the ISRS case. We
9 calculate it the same way. You would calculate it, but the
10 actual position to offset a deferred tax liability with a
11 deferred tax asset that does not exist is hypothetical.

12 Q. Well, that net operating does exist in a vacuum
13 when you examine simply the revenues and expenses associated
14 with the ISRS investment?

15 A. Staff disagrees.

16 Q. I understand. But if you isolate on just the
17 revenue requirement associated with ISRS plant -- I understand
18 that may not be Staff's position, but if you accept that as the
19 premise, that's what this net operating loss number attempts to
20 create?

21 A. I understand that's the Company's position.

22 Q. Okay. What I don't understand is why you think
23 the deferred tax liability at 9.29 million, which you are ready
24 to accept and use to reduce rate base is any more known and
25 measurable or less hypothetical than the deferred tax asset that

1 would act to offset that and increase rate base?

2 A. Well, because again the deferred tax liability
3 is something that is booked on the Company's books and records.
4 Then the NOL that is listed here, is this for 2018, which is
5 already been determined in this proceeding that it doesn't
6 exist. Their income tax return has not been filed, so there is
7 nothing to support this NOL.

8 Q. The only reason the net operating loss doesn't
9 exist in Staff's opinion is because you're looking at it in the
10 aggregate and pulling in non-ISRS related activity for
11 investments and revenues?

12 A. That's not true. No. I would disagree. The
13 net operating loss doesn't exist because of the evidence
14 provided by the Company to Staff that suggests that their NOL
15 balances are declining and the fact that the Company anticipates
16 being able to use its net operating loss carryforward on their
17 2018 tax return, which suggests that they are actually going to
18 be able to use all of their deductions which in turn means that
19 they cannot possibly have generated an NOL in 2018.

20 Q. You are taking a 9.29 million amount of deferred
21 tax liability that you claim customers have paid. Right?

22 A. They are paying -- they are paid.

23 Q. Through base rates?

24 A. Currently paying through base rates, yes.

25 Q. But they are not paying through ISRS rates?

1 A. They will at the end of -- when rates are set in
2 this case.

3 Q. They will 12 months perhaps after rates are set
4 in this case?

5 A. That total --

6 Q. It's an accumulation --

7 A. Yes. You're absolutely right, the total. But
8 they will begin paying once rates are set in this case.

9 Q. But for purposes of your analysis, you're giving
10 the ratepayers the benefit of 9.29 million when they only pay
11 4.25 million in ISRS revenue. So you're borrowing another \$4.7
12 million from general rate revenue to -- which presumably also
13 was in the deferred tax offset in the rate case to pay the
14 customers twice for money they paid and attributed?

15 A. I disagree.

16 Q. But it is clear the customers through ISRS rates
17 in this case and the prior case have not paid enough revenue to
18 support the deferred tax liability you have in your case?

19 A. In isolation, that is correct.

20 MR. ENGLAND: Thank you. No other questions.

21 JUDGE HATCHER: Thank you. There's no questions
22 from the bench.

23 Redirect?

24 MR. JOHNSON: Yes. One moment, Judge. I
25 apologize for the delay.

1 REDIRECT EXAMINATION BY MR. JOHNSON:

2 Q. Ms. Lyons, there were several questions related
3 to deferred taxes being posed to you. Are deferred taxes
4 accounted for as a cash item or an accrual item?

5 A. They are accrual.

6 Q. And in general are rates set based accrual
7 accounting?

8 A. There are not. There are times when we do use
9 accrual accounting to -- as far as a need to. Deferred taxes
10 would be one of those so.

11 Q. I'm sorry, Ms. Lyons. Could you clarify that
12 for me. I believe you just stated that deferred taxes are not
13 an accrual item?

14 A. They are an accrual item.

15 Q. Thank you very much.

16 MR. JOHNSON: No further questions.

17 JUDGE HATCHER: Thank you, Ms. Lyons. You are
18 dismissed.

19 THE WITNESS: Thank you.

20 JUDGE HATCHER: Mr. Johnson, please call your
21 next witness.

22 MR. JOHNSON: Staff would call Matthew Barnes.

23 JUDGE HATCHER: Please raise your right hand.

24 (Witness sworn.)

25 JUDGE HATCHER: Thank you. Please sit down.

1 Mr. Johnson?

2 MATTHEW BARNES having been first duly sworn testified as
3 follows:

4 DIRECT EXAMINATION BY MR. JOHNSON:

5 Q. Could you please state you name and spell your
6 last name for the record?

7 A. My name is Matthew J. Barnes. Last name is
8 spelled B-A-R-N-E-S.

9 Q. Mr. Barnes, how are you employed and in what
10 capacity?

11 A. I'm employed by the Missouri Public Service
12 Commission as an auditor within the water and sewer department.

13 Q. Did you prepare or cause to be prepared direct
14 testimony in this matter marked as Exhibit 10?

15 A. Yes.

16 Q. Do you have any changes or corrections to that
17 testimony?

18 A. I do. On Page 3, Line 6 I need to strike part
19 of the sentence. I need to strike out April update to its. So
20 my answer would read, According to MAWC's initial filing MAWC
21 proposes the following rates.

22 And on Line 8 Rate A, the rate should be
23 \$0.49778. And that same change needs to be made down in Table 1
24 beginning on Line 18. Again it should -- under the Company
25 column Rate A should be \$0.49778. That would actually change

1 the difference slightly. So the difference column would be --
2 the amount should be \$0.02558. And then up above where it says
3 100 gallons, that should be a thousand gallons.

4 Q. All right. Thank you, Mr. Barnes. With those
5 corrections if I were to ask the same questions today would your
6 answers be the same?

7 A. Yes, they would.

8 MR. JOHNSON: Judge, I move for the admission of
9 Exhibit 10.

10 (WHEREIN; Staff Exhibit 10 was offered into
11 evidence.)

12 JUDGE HATCHER: Thank you. Are there any
13 objections to the admission of Exhibit 10, the direct --

14 MS. SHEMWELL: No.

15 JUDGE HATCHER: -- testimony of Mr. Barnes?
16 Seeing none, the testimony is admitted onto the record.

17 (WHEREIN; Staff Exhibit 10 was received into
18 evidence.)

19 JUDGE HATCHER: Go ahead.

20 MR. JOHNSON: Judge, at this time I tender the
21 witness for cross-examination.

22 JUDGE HATCHER: Thank you.

23 Ms. Shemwell?

24 MS. SHEMWELL: Good afternoon, Mr. Barnes.

25 THE WITNESS: Good afternoon.

1 MS. SHEMWELL: I don't have any questions for
2 you.

3 JUDGE HATCHER: Thank you.

4 Mr. England any cross-examination for this
5 witness?

6 MR. COOPER: Judge, Mr. Cooper very quickly
7 here.

8 CROSS-EXAMINATION BY MR. COOPER:

9 Q. Mr. Barnes, you calculated what's represented as
10 Staff's rates based upon Staff's recommended revenue
11 requirement. Correct?

12 A. Yes.

13 Q. And what you've represented as the Company's
14 rates are based upon the Company's recommended revenue
15 requirement. Correct?

16 A. Yes.

17 Q. And if the Commission were to order the
18 Company's revenue requirement, do you agree with the rates that
19 have been calculated by the Company?

20 A. That the Commission were to adopt what the
21 Company has proposed to be filed for the proposed rates, I would
22 have no reasons to disagree with them.

23 MR. COOPER: That's all I have.

24 JUDGE HATCHER: Thank you. Any redirect from
25 Staff.

1 MR. JOHNSON: I have no questions, Judge. Thank
2 you.

3 JUDGE HATCHER: Thank you, Mr. Barnes. You are
4 dispensed.

5 We are coming to the conclusion of our hearing.
6 A couple of quick comments from the bench. Expedited
7 transcripts should be available by the end of business Monday,
8 May 20th. If our court reporter, Lisa, would give me a yes. I
9 have thumbs up for the record that that will be the case.

10 Second reminder, post-hearing briefs are due May
11 24th, that is next Friday. Are there any other matters that
12 need to be addressed before we adjourn?

13 Since this case is related to a previous case in
14 issue, does anyone have any information from the previous case
15 that they want admitted into this case?

16 MS. SHEMWELL: I hadn't thought about that. So
17 I don't know. May I get back to you on that?

18 JUDGE HATCHER: I think a motion would be fine
19 in that regard.

20 MS. SHEMWELL: Thank you.

21 JUDGE HATCHER: Any there any other matters that
22 I have not addressed that we need to before we adjourn? Going
23 once, twice. The evidentiary hearing is adjourned. We are off
24 the record.

25 (WHEREIN; the hearing was concluded.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness 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 deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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