

In the Matter of:  
**Missouri-American Water Company**

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**WO-2020-0190, VOL 1**

*June 03, 2020*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

June 3, 2020

Jefferson City, Missouri

Volume 1

Webex

In the Matter of the Petition of )  
Missouri-American Water Company for ) File No.  
Approval to Change its Infrastructure ) WO-2020-0190  
System Replacement Surcharge (ISRS) )

CHARLES HATCHER, Presiding  
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman  
WILLIAM P. KENNEY  
SCOTT T. RUPP  
MAIDA J. COLEMAN  
JASON R. HOLSMAN  
COMMISSIONERS

REPORTED BY:  
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P R O C E E D I N G S

1  
2 JUDGE HATCHER: Let's go on the record. Good  
3 afternoon. Today is June 3, 2020. The Commission has  
4 set this time for an evidentiary hearing in the  
5 following contested case: In the Matter of the Petition  
6 of Missouri-American Water Company for Approval to  
7 Change its Infrastructure System Replacement Surcharge  
8 (ISRS.) That's File No. WO-2020-0190 and tariff  
9 tracking No. YW-2020-0148.

10 My name is Charles Hatcher, and I am the  
11 Regulatory Law Judge presiding over this hearing. Let's  
12 go ahead and have counsel for the parties make their  
13 entry of appearance. For Missouri-American, Mr. Cooper?

14 MR. COOPER: Thank you, Your Honor. Dean  
15 Cooper from the law firm of Brydon, Swearngen &  
16 England, PC, PO Box 456, Jefferson City, Missouri 65102,  
17 appearing on behalf of Missouri-American Water Company.

18 JUDGE HATCHER: Thank you. And for the Office  
19 of the Public Counsel?

20 MR. CLIZER: Thank you, Your Honor. John  
21 Clizer appearing on behalf of the Office of the Public  
22 Counsel. Our office is at 200 Madison Street, Suite  
23 650, Jefferson City, Missouri 65101.

24 JUDGE HATCHER: Thank you. And for Office of  
25 the Staff of the Missouri Public Service Commission,

1 Mr. Johnson?

2 MR. JOHNSON: Thank you, Judge. Mark Johnson  
3 appearing on behalf of the Staff of the Missouri Public  
4 Service Commission. Our address is 200 Madison Street,  
5 PO Box 360, Jefferson City, Missouri 65102.

6 JUDGE HATCHER: Thank you. We do have a  
7 couple remarks I want to make, because we are doing this  
8 via Webex. Everyone has been doing great thus far. I  
9 think we're all getting used to it a little bit.  
10 Everyone do please mute yourselves, and we will proceed  
11 very slowly during this hearing to allow anyone who  
12 wants to speak to unmute themselves.

13 And just a note there is a Webex chat function  
14 that is a part of this application or web service. That  
15 function is not private. It is not confidential and it  
16 will not be able to protect attorney-client  
17 confidentiality if a counsel needs to consult with any  
18 of their witnesses. I would highly recommend that  
19 nobody use the chat function.

20 Okay. Let's get to preliminary matters.  
21 First an issue about confidentiality. The Office of the  
22 Public Counsel had filed a motion recently asking that  
23 the Commission recognize the fact that a publicly  
24 available Private Letter Ruling is the same as Appendix  
25 M in the Company's application, and the Commission

1 agreed, Missouri-American said they did not object to  
2 that finding of fact, and we're left now with what  
3 appears to me to be a split between parties as to  
4 viewing references to the Private Letter Ruling as  
5 confidential or not. I think I can clear this up with a  
6 quick question, and I will use our previous method of  
7 calling on counsel in the order I just did for answers.

8 Do you have any objections to references to  
9 the Private Letter Ruling in this case being  
10 non-confidential? Mr. Cooper?

11 MR. COOPER: I think the only distinction I  
12 need to make, Your Honor, is that we viewed everything  
13 -- I guess what we were agreeing to was that everything  
14 that was a part of the publicly available Private Letter  
15 Ruling would be public. The distinction I'm making is  
16 that the Public Letter Ruling that's attached as a  
17 schedule to Mr. Wilde's testimony is the same in part  
18 but it also contains the redacted information from that  
19 publicly available Private Letter Ruling. So I guess  
20 the way we looked at it was is that anything that's in  
21 the public PLR could be treated publicly, but I don't  
22 know that that extended to identifying the schedule in  
23 Mr. Wilde's testimony as public because it is slightly  
24 different.

25 JUDGE HATCHER: Okay. What I was trying to



1 get at is the Public Counsel has submitted a  
2 demonstrative exhibit, and let me get to Office of the  
3 Public Counsel. Let's see where we end up at the end of  
4 this. Office of Public Counsel, Mr. Clizer?

5 MR. CLIZER: Let me state specifically to the  
6 demonstrative because that appears to be the impetus  
7 behind your question. The demonstrative includes  
8 information relating to the Private Letter Ruling  
9 request that was made by the Company. That is an  
10 exhibit that was attached to Mr., and I don't think I'm  
11 pronouncing it correctly, Wilde or Wilde, I'm not sure,  
12 testimony. It is confidential and the OPC is not  
13 requesting it not be made confidential at this point in  
14 time. So the demonstrative would need to remain  
15 confidential regardless as to the ruling on the Private  
16 Letter Ruling itself.

17 JUDGE HATCHER: Okay. Mr. Johnson for Staff?

18 MR. JOHNSON: Staff has no objection to the  
19 treatment of confidential or non-confidential  
20 information subject to the agreement between OPC and the  
21 Company.

22 JUDGE HATCHER: Okay. I am not quite crystal  
23 clear where you want to draw the line, Mr. Cooper, but  
24 I'm going to give you quite a bit of latitude to draw  
25 that line. What I'm trying to do is make sure that

1 we're not going in camera for too much of the hearing.  
2 That's all that I'm trying to avoid.

3 MR. COOPER: Your Honor, I agree with  
4 Mr. Clizer in that what's referenced in the  
5 demonstrative exhibit, it's just a separate issue from  
6 what we discussed in that motion.

7 JUDGE HATCHER: Okay. Okay. We have emailed  
8 briefly, again on preliminary matters, about submission  
9 of exhibits. I want to repeat those instructions for  
10 the record. When counsel submits their exhibits for  
11 inclusion into the record, the marking of that exhibit  
12 is going to be obtained by emailing your exhibit to  
13 exhibits@psc.mo.gov, and those exhibits can be emailed.  
14 If you are particularly talented at multi-functioning,  
15 you can do that during the hearing, but I would expect  
16 that that will probably be done after the hearing. I'm  
17 going to set a deadline of Friday to submit those. Do I  
18 hear any objections to that treatment of exhibits,  
19 specifically the Friday deadline? Mr. Cooper?

20 MR. COOPER: No objection, Your Honor.

21 JUDGE HATCHER: Thank you. Mr. Clizer?

22 MR. CLIZER: I have no objection to the Friday  
23 deadline. Just to be clear though, if at the point in  
24 the time we're presenting an exhibit to the opposing  
25 counsel, the witness, and, of course, you, if we were to

1 simply add exhibits@psc.mo.gov at that point in time,  
2 would take care of the filing or the marking as well?

3 JUDGE HATCHER: No. It's going to be two  
4 different processes if you will. So the distribution to  
5 counsel and to myself is what will be used to satisfy  
6 that portion of the rule and also for me to forward your  
7 submission on to the Commissioners. For your exhibit to  
8 be officially marked as entered into the record and  
9 added into EFIS, you'll need to do that second step,  
10 which is submit it to the exhibits@psc.mo.gov email  
11 address.

12 MR. CLIZER: All right. I understand that,  
13 but that would be after a ruling has been made as to  
14 whether it's -- once it's been offered and a ruling has  
15 been made as to its inclusion, I assume?

16 JUDGE HATCHER: Yes.

17 MR. CLIZER: Should we be sending in exhibits  
18 regardless of whether or not, not regardless, but should  
19 all exhibits be sent in to be marked independent of  
20 whether or not they are accepted or only exhibits that  
21 are offered and accepted should be sent to be marked?

22 JUDGE HATCHER: I see -- I had seen two  
23 different avenues so that you could do it in advance and  
24 submit all of your exhibits and then the ones that were  
25 not accepted onto the record just simply wouldn't be

1 marked, but I think you might want to know if you can  
2 get an exhibit specifically marked -- marked  
3 specifically so that it is then not -- when it is not  
4 admitted onto the record it's still marked. Is that  
5 correct, Mr. Clizer?

6 MR. CLIZER: I believe so. I'm attempting to  
7 offer it under the traditional system wherein an exhibit  
8 would be marked, discussed, and then offered and  
9 accepted.

10 JUDGE HATCHER: Yes, and because this is a  
11 virtual hearing and because of the difficulties in  
12 trying to do both of those things all at once, we've  
13 tried to bifurcate the system a little bit, and the hope  
14 was to make this a little bit simpler. So let me know  
15 how that's going at the end of the hearing, but the  
16 thought behind this was to allow, if you wanted to  
17 submit them in advance you certainly could, but I think  
18 everyone is anticipating these will be filed tonight or  
19 tomorrow exactly as in the traditional system if not as  
20 close in time. So you'll offer it, we'll discuss it.  
21 There will be -- I'll ask for objections. There will be  
22 a ruling. And then if it's admitted, great, in the next  
23 day or two submit it to the email address, and that's  
24 how we will get it on EFIS.

25 MR. CLIZER: All right. I think I understand.

1 As I said before, I don't object to the Friday deadline.  
2 Thank you.

3 JUDGE HATCHER: Thank you. And Mr. Johnson?  
4 Let me remind you where we're at. Did you have any  
5 objection to how we're going to treat the exhibits and  
6 specifically I set a Friday deadline for all of the  
7 counsel to submit those to the exhibits@psc email  
8 address?

9 MR. JOHNSON: No objection to the process or  
10 the date. Thank you, Judge.

11 JUDGE HATCHER: Thank you. Next on my list  
12 Staff had a motion to supplement the testimony of  
13 Mr. Oligschlaeger and that was presented as being  
14 unopposed. The Commission will grant that motion unless  
15 there are any objections to be heard.

16 MR. JOHNSON: Judge, I would just clarify that  
17 the motion is in regard to Mr. Arabian's testimony.

18 JUDGE HATCHER: I'm sorry. You are correct.  
19 I had that wrong remark. Mr. Arabian's testimony. Are  
20 there any objections?

21 MR. CLIZER: The OPC does not object.

22 JUDGE HATCHER: Thank you. And hearing none  
23 others, it is so admitted. The motion is so granted.

24 That is all the preliminary matters that I  
25 have, and we will follow the orders of opening witnesses

1 and cross-exam that the parties have previously agreed  
2 to. Are there any other preliminary matters before we  
3 get started? Hearing none, let's move to opening  
4 statements. Mr. Cooper?

5 MR. COOPER: Thank you, Your Honor. Both of  
6 our witnesses, Mr. LaGrand and Mr. Wilde, are on the  
7 Webex and prepared to testify today. As we discussed in  
8 email earlier, we will also be presenting the  
9 Stipulation of Facts that was filed by the parties  
10 previously.

11 The List of Issues filed by the parties in  
12 this case identifies two issues. The first, and I think  
13 the most significant and the one that really gets to the  
14 heart of the case, is should MAWC's incremental pre-tax  
15 revenue requirement in this matter include a total of  
16 \$35,328 associated with MAWC's proposal to address  
17 alleged normalization violations related to eligible  
18 infrastructure system replacements included in MAWC's  
19 current ISRS, currently effective ISRS.

20 That \$35,328 adjustment to the incremental  
21 pre-tax revenue requirement referenced by the issue is  
22 proposed in order to cure at the next available  
23 opportunity the normalization issue identified in a  
24 Private Letter Ruling (PLR) that MAWC received from the  
25 Internal Revenue Service.

1 MAWC's last three ISRS cases, that's  
2 WO-2018-0373, WO-2019-0184 and WO-2019-0389, concerned  
3 an issue related to a potential tax normalization  
4 violation associated with accumulated deferred income  
5 taxes and the reflection of a net operating loss within  
6 the ISRS.

7 The ADIT issue in those cases include both  
8 accelerated depreciation and what was referred to as the  
9 repairs allowance used by the Company. In the PLR, or  
10 Private Letter Ruling, the IRS determined that the  
11 reflection of a full deduction of applicable accelerated  
12 depreciation amounts without an offset for a net  
13 operating loss in computing the ISRS surcharge  
14 constituted a violation of the IRS Code as to  
15 normalization.

16 The IRS, however, also ruled that there was no  
17 normalization violation associated with the Commission's  
18 reflection of the repair allowance amounts without  
19 offset. Thus, in this case MAWC seeks to cure the  
20 violation associated with the accelerated depreciation  
21 only. That request is supported by the Staff of the  
22 Commission and opposed by the Office of the Public  
23 Counsel.

24 OPC Witness Riley primarily criticizes the  
25 substance of the request for the Private Letter Ruling

1 in spite of the fact that that request was a very  
2 thorough and accurate description of the facts.

3 First, I would remind the Commission that as  
4 is stated in the testimony, the Commission Staff was  
5 given the opportunity to review the request, did review  
6 the request, provided comments that were included with  
7 the request and indicated its belief that the request  
8 was adequate and complete.

9 Second, the request provides specific  
10 information as to the Commission's findings and  
11 conclusions in a prior case, and the resulting Private  
12 Letter Ruling recognizes that during the relevant time  
13 period, parent, this is a quote, parent on a  
14 consolidated basis and taxpayer on a separate company  
15 basis estimate that taxable income was earned and thus  
16 NOLC, or the net operating loss carryover, was utilized.  
17 That fact was obviously known to the IRS and did not  
18 change its ruling that an NOL must be reflected in the  
19 ISRS in conjunction with the recognition of accumulated  
20 depreciation as to the accelerated depreciation.

21 There was no misrepresentation of the facts  
22 presented in the PLR request nor a misunderstanding by  
23 the IRS. OPC essentially asked the Commission to ignore  
24 the Private Letter Ruling and reach its own conclusions  
25 as to the tax normalization issue. This seems to be a



1 very big ask as ultimately tax normalization is a tax  
2 question for the IRS.

3           As Staff Witness Oligschlaeger states, the  
4 ISRS is the agency designated to interpret its code and  
5 to determine whether the actions of taxpayers and for  
6 regulated utilities the actions of its regulators are in  
7 compliance with the IRS Code. He further points out  
8 that while the IRS certainly has no direct power to set  
9 utility rates, the consequences of violating the IRS  
10 Code in respect to the normalization requirements are of  
11 sufficient gravity to command the attention of all  
12 parties to Commission proceedings and the Commission  
13 itself in regard to tax normalization issues in rate  
14 proceedings.

15           This Commission previously recognized that the  
16 IRS ruling would have some import. In its Report and  
17 Order in File No. WO-2019-0184, the Commission directed  
18 Missouri-American to file a notice with the Commission  
19 within 10 days of the issuance of a conclusion or  
20 statement of violation from the Internal Revenue Service  
21 concerning a possible violation of its consent order  
22 and/or normalization rules. MAWC so timely filed the  
23 PLR with the Commission shortly after receipt.

24           Because of the IRS's ruling that the Company  
25 violated the tax normalization rules in regard to

1 applicable ADIT associated with accelerated depreciation  
2 amounts, a failure to cure the normalization violation  
3 in some fashion could cause MAWC to lose significant tax  
4 benefits currently benefiting customers. Specifically,  
5 MAWC could lose its ability to claim accelerated tax  
6 depreciation deductions. Accelerated tax depreciation  
7 allows the Company to expense investments faster for tax  
8 purposes than for book purposes. This differential  
9 sometimes described as a zero interest loan from the  
10 government is a reduction to rate base. All else being  
11 equal, both the Company's revenue requirement and the  
12 customers' rates are lower when the Company can utilize  
13 this tax treatment.

14           Making the adjustment as proposed by the  
15 Company and Staff in this case has several benefits.  
16 First, addressing the matter in this manner provides  
17 more certainty in terms of truly curing the issue with  
18 respect to the IRS. As Company Witness John Wilde  
19 explains, the IRS requires normalization violations to  
20 be remedied at the next available opportunity. Making  
21 the adjustment here would do so.

22           Second, addressing the issue within the  
23 current ISRS ensures that the Company collects no more  
24 and no less than the identified amount and allows  
25 recovery to be received from only those customers to

1 which the ISRS applies.

2           Lastly, as a practical matter, the relatively  
3 small amount associated with the cure makes this  
4 solution very manageable. Staff Witness Matt Barnes  
5 computes the difference in rates based on whether the  
6 \$35,328 is included or not. That difference in rates is  
7 extremely small.

8           The difference is so small, in fact, that it  
9 does not seem to make any sense to essentially play a  
10 game of chicken with the IRS over this impact as  
11 encouraged by the OPC given the significant adverse  
12 impact for the Company and the customers if there is a  
13 tax normalization violation and loss of accelerated  
14 depreciation.

15           Now, the second issue that was identified on  
16 the List of Issues, which I do not necessarily see as  
17 being unique, was should MAWC's incremental pre-tax  
18 revenue requirement in this matter include recognition  
19 of deferred taxes associated with accelerated  
20 depreciation tax timing differences.

21           Section 393.1000(1)(a) indicates that  
22 appropriate pre-tax revenues associated with an ISRS  
23 include accumulated deferred income taxes and  
24 accumulated depreciation associated with eligible  
25 infrastructure replacements which are included in a

1 currently effective ISRS.

2 Missouri-American's ISRS recognizes  
3 accumulated deferred income taxes along with the above  
4 referenced or the previously referenced net operating  
5 loss deferred tax asset associated with the eligible  
6 infrastructure system replacements included in MAWC's  
7 current ISRS. Therefore, we believe it certainly  
8 complies with the statute.

9 I'd like to close with an excerpt from the  
10 Commission's transcript in File WO-2019-0184. On pages  
11 26 to 29 of the transcript, then Commissioner Hall asked  
12 both Staff and OPC counsel their clients' position in  
13 regard to whether they would recommend inclusion of the  
14 calculated net operating loss if the Commission found  
15 that failure to do so would be a tax normalization  
16 violation.

17 Ms. Shemwell for the Public Counsel stated as  
18 follows, and I'm starting on line 9 of -- excuse me,  
19 line 14 of page 27. Ms. Shemwell said, "Public Counsel  
20 strongly recommends that the Commission allow the IRS to  
21 interpret its own rules and the Company is on a path to  
22 ask the IRS to do that and so the Commission should not  
23 get out in front of the IRS would be our  
24 recommendation."

25 Commissioner Hall stated "What if we got a

1 private letter ruling consistent with the Company's  
2 position?"

3 Ms. Shemwell stated "Then I believe the  
4 Commission should accept the IRS's recommendation or its  
5 decision."

6 Commissioner Hall stated "And set the ISRS  
7 accordingly?"

8 Ms. Shemwell stated "Well, I don't see any  
9 reason the Commission would violate or had suggest the  
10 Company violate an IRS regulation."

11 Ms. Shemwell described in that case exactly  
12 where we are today. The Commission has waited for the  
13 IRS to weigh in. The IRS has weighed in and indicated  
14 that failure to reflect a net operating loss in regard  
15 to the accumulated deferred income taxes associated with  
16 accelerated depreciation was a tax normalization  
17 violation.

18 The Commission should approve the adjustment  
19 proposed by MAWC to cure this violation. That's all I  
20 have, Your Honor.

21 JUDGE HATCHER: Thank you, Mr. Cooper. Are  
22 there any Commissioner questions for Mr. Cooper before  
23 we move on to the next opening statement by Staff? I'll  
24 give everyone a moment to unmute. All right.

25 COMMISSIONER RUPP: No questions from

1 Commissioner Rupp.

2 JUDGE HATCHER: Thank you, Commissioner. Was  
3 that somebody with a question?

4 COMMISSIONER KENNEY: Kenney has no questions.

5 JUDGE HATCHER: Thank you, Commissioner  
6 Kenney.

7 CHAIRMAN SILVEY: Silvey has no questions.

8 JUDGE HATCHER: Thank you. All right,  
9 Mr. Johnson, please go ahead with your opening.

10 MR. JOHNSON: Thank you, Judge. Good  
11 afternoon and may it please the Commission. My name is  
12 Mark Johnson, and I am representing the Staff of the  
13 Commission before you today. As Mr. Cooper indicated,  
14 the parties have presented two issues to the Commission.  
15 However, Staff believes these issues are part and parcel  
16 and can really be boiled down to a single issue. And  
17 that is should Missouri-American's incremental pre-tax  
18 revenue requirement in this ISRS case be adjusted to  
19 account for net operating loss amounts consistent with  
20 the IRS rulings in the recent Private Letter Ruling  
21 requested by Missouri-American and to cure any past  
22 normalization violation.

23 Staff believes the answer to this question is  
24 yes. As such, Staff has included an amount in its  
25 recommended ISRS revenue requirement to account for net

1 operating loss and recommends the Commission include an  
2 adjustment totaling \$35,328 to cure past normalization  
3 violations.

4           The issue of the recognition of net operating  
5 losses in ISRS is not a new one to this Commission.  
6 This issue has been addressed in some manner in each of  
7 Missouri-American's last three ISRS proceedings. In  
8 each of those cases, Staff and the Office of the Public  
9 Counsel opposed the reflection of NOL amounts in ISRS  
10 while Missouri-American claimed failure to do so could  
11 result in a violation of the IRS Code's normalization  
12 requirement.

13           Now, two of those cases were litigated: Case  
14 Nos. WO-2018-0373 and WO-2019-0184. And ultimately the  
15 Commission agreed with Staff and OPC's positions finding  
16 that there was no evidence of NOLs being generated  
17 during the ISRS periods and as such ordered the full  
18 amount of the applicable accelerated depreciation and  
19 repair allowance deductions available to  
20 Missouri-American be reflected in ISRS rates.

21           However, as I just indicated and as stated in  
22 Staff's recommendations, testimonies and positions filed  
23 in this case, Staff now recommends reflection of an NOL  
24 amount in ISRS. You may ask what has changed. Well,  
25 following the issuance of the Commission's order in

1 WO-2018-0373, Missouri-American made a request for a  
2 Private Letter Ruling from the IRS generally inquiring  
3 into whether the Commission's treatment of net operating  
4 losses in setting Missouri-American's ISRS rates  
5 constituted a violation of its normalization  
6 restriction.

7 In the course of preparing its request,  
8 Missouri-American shared drafts with Staff and Staff  
9 provided input and substantial feedback, including  
10 explanations and justifications for its positions taken  
11 in the recent Commission proceedings. These comments  
12 were attached to the PLR request sent to the IRS for its  
13 consideration.

14 In early December of 2019, the IRS provided  
15 its Private Letter Ruling. since its issuance, Staff  
16 has reviewed it and through its analysis concludes that  
17 the IRS has determined that the Commission's actions in  
18 prior ISRS cases did constitute a violation of the IRS  
19 Code's normalization restriction. Specifically the PLR  
20 indicates agreement that Missouri-American incurred a  
21 tax loss during the ISRS periods in prior cases due to  
22 the addition of ISRS plant and that this loss must be  
23 reflected in ISRS rates due to the normalization  
24 requirement.

25 In Staff's view, this finding effectively



1 demonstrates IRS support for Missouri-American's  
2 positions in prior cases that ADIT associated with ISRS  
3 plant additions must be offset by an assumed NOL in  
4 order to comply with the IRS Code.

5           However, as Mr. Cooper stated, the IRS also  
6 determined that the Commission's treatment of reflecting  
7 a full deduction of applicable repair allowance amounts  
8 did not violate the normalization restrictions within  
9 the Code and it is this finding that has resulted in the  
10 necessary adjustments to comply with the PLR's findings  
11 being relatively immaterial.

12           Failure to cure these normalization violations  
13 could potentially result in Missouri-American losing its  
14 ability to utilize accelerated depreciation and  
15 ultimately that result could cause higher rates for its  
16 ratepayers.

17           Now, while it was stipulated in  
18 Missouri-American's most recent ISRS case, WO-2019-0389,  
19 that in the event the IRS found in Missouri-American's  
20 favor disputed NOL amounts from prior ISRS cases should  
21 be deferred through an AAO, Staff does not object to the  
22 Company's proposal to collect these amounts in this ISRS  
23 proceeding. Doing so now, as explained by the Company,  
24 has its benefits. Namely, including the amount in this  
25 proceeding allows the past violations to be cured as

1 quickly as possible. The applicable amounts would also  
2 be recovered only from those customers to which the ISRS  
3 applies. And as the necessary amounts are relatively  
4 small the impact to ratepayers would be minimal.

5 Therefore, it is Staff's position that the  
6 Commission account for a net operating loss amount in  
7 Missouri-American's incremental pre-tax revenue  
8 requirement in this matter consistent with the PLR  
9 requested by Missouri-American.

10 The Commission should also include an  
11 adjustment totaling \$35,328 to cure any past  
12 normalization violations committed by the Company, and  
13 as such Staff recommends the Commission approve its  
14 recommended ISRS surcharge revenues in the incremental  
15 pre-tax revenue amount of \$9,725,687 and approve the  
16 rates recommended by Staff in its direct testimony.

17 I have with me today Staff Witness Mark  
18 Oligschlaeger who will provide testimony relating to the  
19 net operating loss issue and to the impact of the PLR  
20 requested by Missouri-American, Ali Arabian who  
21 sponsor's Staff's recommendation, and Matthew Barnes who  
22 will provide testimony on Staff's recommended rate  
23 design. They will be happy to answer any questions you  
24 may have. Thank you.

25 JUDGE HATCHER: Thank you, Mr. Johnson. Are

1 there any Commissioner questions for Mr. Johnson? All  
2 right. Hearing none, Mr. Clizer, for the Public  
3 Counsel?

4 MR. CLIZER: Good afternoon. May it please  
5 the Commission. So why are we here today? We've  
6 already heard from the Staff of the Commission and we've  
7 heard from the Company, and the general idea is that we  
8 have a Private Letter Ruling from the IRS that talks  
9 about normalization violations. Now, both Staff and the  
10 Company would have you believe that the primary question  
11 involved in all these prior ISRS cases was whether or  
12 not a net operating loss created a normalization  
13 violation. That's not true.

14 The primary question as identified by Staff  
15 Witness Mr. Oligschlaeger himself was whether or not a  
16 net operating loss, or NOL, ever existed, and this  
17 Commission twice determined that the Company had not  
18 suffered a net operating loss. Then the Company decided  
19 to appeal both of those decisions. And the Western  
20 District Court of Appeals twice told the Company the  
21 Commission got it right. You have not suffered a net  
22 operating loss.

23 So how did that factor into the current  
24 situation? Well, the sad fact of the matter is while  
25 this should have been resolved, the Company decided to

1 make false representations to the IRS in the course of  
2 requesting its Private Letter Ruling and that has thrown  
3 everything into confusion. Now, to get more specific  
4 into this, I would like to draw the Commission's  
5 attention to the OPC's demonstrative.

6 And before I go any further, Judge, my  
7 understanding is that people outside of this Webex will  
8 not be able to see the demonstrative?

9 JUDGE HATCHER: Yes, Mr. Clizer, that's  
10 correct. I've forwarded that to the Commissioners so  
11 they will be able to view it while you're talking, but  
12 it's not posted up on any shared screen and our video  
13 feed is also not the video that is being broadcast.

14 MR. CLIZER: All right. In that case, Judge,  
15 I will acknowledge the point at which my discussion of  
16 the demonstrative reaches confidential information and  
17 the need to go in camera. Until then I will just  
18 discuss the non-confidential portions through the course  
19 of the rest of my opening, if that's agreeable to you.

20 JUDGE HATCHER: Yes. Please go ahead.

21 MR. CLIZER: All right. So the OPC has set  
22 forth the historical background behind these cases. The  
23 first thing that we've talked about is what this  
24 Commission reached in its decision in the 2018-0373  
25 case. Now, the first and most important thing I want

1 this Commission to recognize is No. 20. MAWC did not  
2 generate any NOL in the 2018 ISRS period. That was this  
3 Commission's finding of fact. And in No. 19, this  
4 Commission also noted that the Private Letter Rulings  
5 that they wanted -- I'm sorry, the Company wanted to  
6 rely on were not appropriate because they concerned  
7 companies that actually had suffered a net operating  
8 loss. If we go down a little bit, we can see what the  
9 Commission ultimately decided is that although the ISRS  
10 statute requires recognition of ADIT, which might  
11 include reflection of an NOL, we cannot allow MAWC to  
12 reduce its ADIT balance to reflect an NOL that does not  
13 exist.

14 Now, like I said, this decision was appealed  
15 by the Company to the Court of Appeals and the Court of  
16 Appeals affirmed. It said look, the Commission found  
17 that no NOL was generated so we don't have to worry  
18 about whether or not there's a normalization violation  
19 because you don't even have an NOL. That was the first  
20 case.

21 The second case was much strongly litigated,  
22 but this Commission still reached the exact same  
23 conclusion. The Company does not have an NOL. Once  
24 again, this Commission also noted that the Private  
25 Letter Rulings upon which MAWC are relying were not

1 effective because they concerned situations where there  
2 was an NOL but there wasn't one in this case. This  
3 decision was again appealed to the Court of Appeals who  
4 again affirmed this Commission got it right, the Company  
5 does not have an NOL.

6 And now, Judge, I think we will need to go in  
7 camera.

8 JUDGE HATCHER: Okay. Give me just a second.  
9 We'll go in camera. Sorry about that. We've got to  
10 coordinate with IT. Okay.

11 (REPORTER'S NOTE: The following part of the  
12 proceeding is in camera.)

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1 (In camera session)

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(REPORTER'S NOTE: At this point, public session resumed.)

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JUDGE HATCHER: Okay. Thank you for your patience. I am just waiting for confirmation from our computer department. Okay. We are back on. Mr. Clizer, was that the conclusion of your opening statement?

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MR. CLIZER: No, it was not, Your Honor.

JUDGE HATCHER: Okay. Please continue.

MR. CLIZER: Thank you. So where are we? The one thing that Mr. Cooper did correctly state regarding the Private Letter Ruling is that the IRS concluded that if there was a net operating loss there was a normalization violation. The OPC's point is that there is no net operating loss. The Commission has already determined that. The IRS Private Letter Ruling did not overturn that because the IRS was never asked if there was a private -- sorry -- if there was a net operating loss. So it's not an issue. Instead what is left is already what the Commission has determined, no net operating loss. And if there's no net operating loss,

1 there's no normalization violation and hence nothing  
2 that needs to be adjusted. It's very, very simple.

3 Now, the attorney for Missouri-American Water  
4 suggested that the OPC was requesting a big ask of the  
5 Commission by asking us -- asking the Commission to go  
6 against the IRS. Let's be clear. That's not what the  
7 OPC is requesting.

8 The OPC is requesting that you follow the  
9 letter of the Private Letter Ruling and say only if a  
10 net operating loss exists is there a normalization  
11 violation but to acknowledge that no net operating loss  
12 exists as you already have done and as the OPC will  
13 continue to prove. The big ask in this case is actually  
14 what the Company is requesting. The Company is  
15 requesting that this Commission overturn both of its  
16 prior decisions and overturn both of the Western  
17 District appellate decisions that confirmed this  
18 Commission's prior decisions to determine there is a net  
19 operating loss based exclusively on facts as represented  
20 to the IRS and not what the IRS actually determines.

21 That is a huge outcome and is one of the two  
22 major precedential problems that the Commission is  
23 facing with this case. The second one, and I want to  
24 bring this to address the issue regarding 35,000. Both  
25 Staff and the Company have insinuated that because this

1 case is only worth 35,000, it's not a big deal. The  
2 problem, and the OPC will again represent this through  
3 the course of the case, is that the effect of this  
4 decision could fundamentally alter how tax treatment is  
5 handled for all utilities that appear before this  
6 Commission. In other words, the effect of this case  
7 could be in the hundreds of millions if not billions.  
8 There's a very serious issue regarding whether or not a  
9 company can claim a net operating loss based on the fact  
10 that it does not immediately receive revenue from plant  
11 that it puts into service.

12 The Western District has already expressly  
13 rejected that argument and the IRS never touched it.  
14 All we are asking is that the Commission continue to  
15 follow the law and say that no net operating loss exists  
16 and not accept the Company's invitation to overturn  
17 decades of precedent.

18 Finally, I would point out that even if you  
19 disregard everything previously there are still problems  
20 with this case. That is because neither Company nor  
21 Staff has taken into consideration important aspects of  
22 this net operating loss adjustment calculation, in  
23 particular the two other forms of revenue that the  
24 Company is receiving that offset and eliminate the  
25 claims net operating loss. The first is Contributions

1 In Aid of Construction. This is explained in  
2 Mr. Riley's rebuttal testimony, but essentially  
3 Contributions In Aid of Construction are now considered  
4 taxable income thanks to the 2017 Tax Cuts and Jobs Act.

5 As taxable income, the CIAC related to the  
6 ISRS cases would have to be included in revenues as an  
7 offset to NOL, but neither Company nor Staff have  
8 included CIAC. Hence, an immediate and obvious problem.

9 The second and more substantial problem is the  
10 fact that the revenue -- sorry, the pipes that are being  
11 put into place through this ISRS of generating revenue  
12 for the Company. Those pipes are being used to  
13 transport water, which is being sold for profit, hence  
14 producing a revenue stream that can offset any claimed  
15 NOL that the Company wishes to argue.

16 I've already said several times the OPC will  
17 present the testimony of Mr. John Riley. He's an expert  
18 on tax. He's been cited to by this Commission multiple  
19 times in the past on this case and has been cited by the  
20 Court of Appeals multiple times in the past as to this  
21 particular case.

22 The OPC is simply asking the Commission to  
23 affirm its prior decisions that no NOL existed and  
24 because no NOL existed there is no normalization  
25 violation even under the plain ruling provided in the

1 Commission's -- sorry, the IRS's Private Letter Ruling.  
2 With that, I'd ask if there are any questions and thank  
3 the Commission for their time.

4 JUDGE HATCHER: Thank you. Are there any  
5 Commissioner questions for Mr. Clizer?

6 All right. Hearing none, let's move on to our  
7 witnesses. Our first witness is Brian LaGrand.  
8 Mr. LaGrand, let me swear you in and then I'll turn you  
9 over to Mr. Cooper.

10 (Witness sworn.)

11 JUDGE HATCHER: Thank you. Mr. Cooper?

12 MR. COOPER: Judge, before I start with Mr.  
13 LaGrand and before I forget this, we had talked about  
14 the Stipulation of Facts and marking that as an exhibit.  
15 I would like to mark the Stipulation of Facts that was  
16 filed in this case by the parties as Exhibit No. 100 for  
17 identification.

18 JUDGE HATCHER: Thank you.

19 MR. COOPER: With that, I would like to offer  
20 the Stipulation of Facts.

21 JUDGE HATCHER: Are there any objections to  
22 the admittance of Exhibit 100, the jointly filed  
23 Stipulation of Facts? Mr. Clizer?

24 MR. CLIZER: No objection.

25 JUDGE HATCHER: Mr. Johnson?

1 MR. JOHNSON: No objection.

2 JUDGE HATCHER: Without objection, it is so  
3 admitted.

4 (COMPANY'S EXHIBIT 100 WAS RECEIVED INTO  
5 EVIDENCE AND MADE A PART OF THIS RECORD.)

6 JUDGE HATCHER: Mr. Cooper?

7 MR. COOPER: We will mark the direct testimony  
8 of Brian W. LaGrand as Exhibit No. 101.

9 JUDGE HATCHER: So marked.

10 BRIAN W. LaGRAND,  
11 called as a witness, being sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. COOPER:

13 Q. With that, Mr. LaGrand, would you state your  
14 full name for us?

15 A. Yes. Brian W. LaGrand.

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

17 A. Missouri-American Water. I'm the Director of  
18 Rates.

19 Q. Have you caused to be prepared for the  
20 purposes of this proceeding certain direct testimony in  
21 question and answer form?

22 A. Yes, I have.

23 Q. Is it your understanding that that testimony  
24 has been marked as Exhibit 101 for identification?

25 A. Yes.

1 Q. Do you have any changes that you would like to  
2 make to that testimony at this time?

3 A. No, I do not.

4 Q. If I were to ask you the questions which are  
5 contained in Exhibit 101 today, would your answers be  
6 the same?

7 A. Yes, they would.

8 Q. Are those answers true and correct to the best  
9 of your information, knowledge and belief?

10 A. Yes.

11 MR. COOPER: Your Honor, with that, I would  
12 offer Exhibit 101 into evidence and tender Mr. LaGrand  
13 for cross-examination.

14 JUDGE HATCHER: Thank you. Are there any  
15 objections to the admittance of Exhibit 101 to the  
16 hearing record? Mr. Clizer?

17 MR. CLIZER: No objections.

18 JUDGE HATCHER: Mr. Johnson?

19 MR. JOHNSON: No objections.

20 JUDGE HATCHER: Without objection, it is so  
21 admitted.

22 (COMPANY'S EXHIBIT 101 WAS RECEIVED INTO  
23 EVIDENCE AND MADE A PART OF THIS RECORD.)

24 JUDGE HATCHER: And the witness has been  
25 tendered. According to the preapproved and jointly

1 filed schedule, cross will start with Staff.

2 Mr. Johnson?

3 MR. JOHNSON: I have no questions. Thank you,  
4 Judge.

5 JUDGE HATCHER: And Mr. Clizer?

6 MR. CLIZER: I have no questions either.  
7 Thank you, Judge.

8 JUDGE HATCHER: Are there any Commissioner  
9 questions? Hearing none, let's proceed to the next  
10 witness. I believe that is John Wilde. Mr. Wilde, if  
11 you could unmute yourself and I will swear you in.

12 (Witness sworn.)

13 JUDGE HATCHER: Thank you. Mr. Cooper, your  
14 witness.

15 MR. COOPER: Thank you, Your Honor. We will  
16 be marking, or would like to mark I guess I should say,  
17 Mr. Wilde's direct testimony confidential version 102,  
18 102C and the public version of his direct testimony as  
19 102P.

20 JUDGE HATCHER: Mr. Cooper, let's hold on. I  
21 am getting a notification we're having some audio  
22 issues.

23 MR. COOPER: Okay.

24 JUDGE HATCHER: If you could please be patient  
25 a second, I will check with tech.



1 (Off the record.)

2 JUDGE HATCHER: Okay. We're going to go ahead  
3 and forge ahead while they fix that -- or check on that  
4 rather, because we do have a court reporter here. So  
5 Mr. Cooper, let's go ahead with your direct.

6 MR. COOPER: We're in the process I think,  
7 Your Honor, of marking some testimony here and we were  
8 going to mark Mr. Wilde's direct testimony confidential  
9 and public as 102C and 102P.

10 I think you're muted, Your Honor.

11 JUDGE HATCHER: It was so marked. And you're  
12 getting ready to question your witness.

13 MR. COOPER: Well, I've got rebuttal testimony  
14 as well. I apologize. I have then rebuttal testimony  
15 for Mr. Wilde would be 103C and 103P, confidential and  
16 public versions.

17 JUDGE HATCHER: All right. That is so marked.

18 JOHN WILDE,  
19 called as a witness, being sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. COOPER:

21 Q. Mr. Wilde, would you state your full name for  
22 the record?

23 A. Yes. It's John R. Wilde, W-i-l-d-e.

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

25 A. American Water Services Company in the

1 capacity of VP of Tax, and I represent Missouri-American  
2 amongst the other utilities that American Water holds.

3 Q. Have you caused to be prepared for the  
4 purposes of this proceeding certain direct and rebuttal  
5 testimony in question and answer form?

6 A. Yes.

7 Q. Is it your understanding that that testimony  
8 has been marked as Exhibits 102 and 103 in both  
9 confidential and public versions?

10 A. I do understand that, yes.

11 Q. Do you have any changes that you would like to  
12 make to that testimony at this time?

13 A. Not at this time, no.

14 Q. If I were to ask you the questions which are  
15 contained in Exhibits 102C and P and 103C and P today,  
16 would your answers be the same?

17 A. Yes, they would.

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

20 A. Yes, they are.

21 MR. COOPER: Your Honor, I would offer at this  
22 time Exhibits 102C, 102P, 103C and 103P into evidence.

23 JUDGE HATCHER: Thank you. Are there any  
24 objections to the mentioned Exhibits 102 and 103, both  
25 the confidential and public versions of each?

1 Mr. Clizer, any objections?

2 MR. CLIZER: No, Your Honor.

3 JUDGE HATCHER: Thank you. Mr. Johnson?

4 MR. JOHNSON: No objections. Thank you,  
5 Judge.

6 JUDGE HATCHER: Without objection, Exhibit 102  
7 confidential and public and Exhibit 103 confidential and  
8 public are admitted onto the hearing record.

9 (COMPANY'S EXHIBITS 102C, 102P, 103C AND 103P  
10 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THIS  
11 RECORD.)

12 JUDGE HATCHER: Mr. Cooper?

13 MR. COOPER: Thank you, Your Honor, we would  
14 tender Mr. Wilde for cross-examination.

15 JUDGE HATCHER: Thank you. And Mr. Johnson,  
16 your witness.

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

19 JUDGE HATCHER: Thank you. And Mr. Clizer?

20 MR. CLIZER: Thank you, Your Honor. I'm going  
21 to ask for the Court to give a little patience here as  
22 I'm going to try and present an exhibit. So this will  
23 be the first time I've done this in this format. But  
24 before that, good afternoon, Mr. Wilde. How do you  
25 pronounce your name?

1 THE WITNESS: Wilde.

2 MR. CLIZER: Wilde. I apologize. That's not  
3 my intention.

4 Your Honor, I am currently attempting to send  
5 an exhibit to opposing counsel and yourself.

6 JUDGE HATCHER: Okay.

7 MR. CLIZER: Give me one second. I apologize.  
8 And I should note that this is a confidential or rather  
9 an exhibit that would contain confidential information.

10 JUDGE HATCHER: All right.

11 MR. CLIZER: Mr. Cooper, would it be better  
12 that I send it directly to the witness or would you  
13 prefer to forward it to the witness yourself? I'm not  
14 sure that I have the witness's email address.

15 MR. COOPER: Yeah, if you send it to me,  
16 Mr. Clizer, I'll forward.

17 MR. CLIZER: All right. I have sent that  
18 email and I am waiting for receipt.

19 Would opposing counsel and/or the Judge please  
20 identify whether or not they receive a copy?

21 JUDGE HATCHER: I just received it.

22 MR. COOPER: I have not yet.

23 JUDGE HATCHER: I'm forwarding now.

24 MR. COOPER: There, I have received it.

25 MR. JOHNSON: I have received it as well.

1 MR. CLIZER: All right. With that, I believe  
2 I'm ready to proceed unless Your Honor would say  
3 differently.

4 MR. COOPER: Mr. Clizer --

5 JUDGE HATCHER: I'm sorry. Go ahead.

6 MR. COOPER: -- I have not yet been able to  
7 forward it so if you'll give me just --

8 MR. CLIZER: Oh, of course.

9 MR. COOPER: I have forwarded it. I don't  
10 know whether Mr. Wilde has received it yet or not.

11 THE WITNESS: I have not received it yet. I'm  
12 looking.

13 JUDGE HATCHER: Mr. Clizer, do you have  
14 questions that we could start with that maybe aren't on  
15 the exhibit while that makes its way through the  
16 interwebs?

17 MR. CLIZER: Actually I probably won't.

18 JUDGE HATCHER: Okay. Fair enough. Hold on  
19 just a minute.

20 (Off the record for a couple minutes. The  
21 court reporter had a technical computer issue.)

22 THE COURT REPORTER: Judge, I think I'm ready  
23 to go.

24 JUDGE HATCHER: Our court reporter says that  
25 she is reconnected and ready to go.

1 THE WITNESS: The problem is the witness  
2 hasn't received -- I haven't received that file yet.

3 JUDGE HATCHER: Okay. We're still waiting  
4 then.

5 MR. CLIZER: Mr. Cooper, are you there?

6 JUDGE HATCHER: He's muted.

7 MR. COOPER: There we go. I am.

8 MR. CLIZER: If you've taken a look at the  
9 exhibit, I think you'll appreciate that it's a DR  
10 response the OPC received from the Company. I don't  
11 know if this will help. If the Company is willing to  
12 stipulate to the admission of the exhibit, then I can  
13 forego any further questioning.

14 MR. COOPER: That's probably where we will be.  
15 Gosh, I'd like for Mr. Wilde to at least be able to see  
16 it before I did that.

17 THE WITNESS: Could you try sending it again?

18 MR. COOPER: Yes, I will.

19 THE WITNESS: Or send it to Brian as well and  
20 have Brian forward it. Maybe it's internal.

21 MR. COOPER: I did send it to Brian at the  
22 same time.

23 JUDGE HATCHER: Mr. Cooper, Mr. Clizer and  
24 Mr. Johnson, I have a proposal. While we wait for  
25 Mr. Wilde to get the email, would it be all right if we

1 go ahead and go to Commissioner questions and then we  
2 can come -- well, no, let's go ahead and wait for  
3 Mr. Wilde to look over his exhibit. That sounds better.

4 MR. CLIZER: I was going to add that I would  
5 actually be okay with that.

6 JUDGE HATCHER: Mr. Wilde, any update on the  
7 email?

8 THE WITNESS: No. I'm getting other emails  
9 but not the emails yet.

10 JUDGE HATCHER: Okay.

11 MR. COOPER: I'm going to try something  
12 different, Your Honor. Mr. LaGrand has access to our DR  
13 responses obviously. Let me point that out to him.

14 THE WITNESS: Well, if you just tell me what  
15 DR response it is, I can look that up as well.

16 MR. COOPER: It's going to be OPC DR-1300.

17 THE WITNESS: 1400?

18 MR. COOPER: 1300.

19 MR. CLIZER: I would add specifically it's  
20 Attachment 3 that was provided.

21 THE WITNESS: I'll try to find it that way.

22 JUDGE HATCHER: Okay. Mr. Cooper,  
23 Mr. Johnson, do either of you have any objections to my  
24 going ahead with Commissioner questions? I do have a  
25 few.

1 MR. JOHNSON: I have no objection.

2 MR. COOPER: I have no objection either. I  
3 take it that means that these are Mr. Clizer's only  
4 questions for Mr. Wilde?

5 THE WITNESS: I did receive the file now.

6 JUDGE HATCHER: Let's stop the train.  
7 Mr. Clizer, let's go ahead and we'll give Mr. Wilde a  
8 few minutes to look over and get familiar and then,  
9 Mr. Clizer, please start your cross-exam.

10 MR. CLIZER: Does Mr. Wilde believe he has  
11 looked over them sufficiently?

12 THE WITNESS: Yes.

13 CROSS-EXAMINATION BY MR. CLIZER:

14 Q. Can you please identify without divulging any  
15 confidential information what the item in question is?

16 A. It's a schedule, one of the schedules that you  
17 prepare with respect to submitting a tax return via  
18 efile to the IRS for 2018.

19 Q. And this is a bit awkward, because I'm not  
20 sure if it's what I actually sent you, but is the  
21 exhibit a true and accurate copy of what was sent to the  
22 OPC in response to the data request the OPC provided to  
23 the Company?

24 A. It is, yes, part of the response of the tax  
25 return we sent in. What I have on my screen is Form



1 8453-C.

2 Q. Let me just double check that we're talking  
3 about the same thing here.

4 JUDGE HATCHER: Mr. Wilde, if you could hold  
5 on just a minute. Bev, I'll unmute you.

6 THE COURT REPORTER: Mr. Wilde's answer was  
7 muffled.

8 MR. CLIZER: All right. At this point I'm  
9 just going to try and move things along. I would ask  
10 that this be marked as OPC Exhibit 200 and offer it.

11 JUDGE HATCHER: Right. Are there any  
12 objections to the admittance of Exhibit 200 of Mr.  
13 Clizer? Was there a public version of that as well?

14 MR. CLIZER: Not to my knowledge  
15 unfortunately.

16 JUDGE HATCHER: So just Exhibit 200, the  
17 confidential version. Are there any objections, Mr.  
18 Cooper?

19 MR. COOPER: No, Your Honor.

20 JUDGE HATCHER: Any objections, Mr. Johnson?

21 MR. JOHNSON: No, Judge.

22 JUDGE HATCHER: Then Exhibit 200 confidential  
23 without objection is so admitted onto the hearing  
24 record.

25 (OPC'S EXHIBIT 200 CONFIDENTIAL WAS RECEIVED

1 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

2 JUDGE HATCHER: And Mr. Clizer?

3 MR. CLIZER: That actually concludes this  
4 exhibit in a cross of a later Staff witness but needed  
5 this witness to identify the foundation for it. Having  
6 the admission been admitted, I have no further cross.  
7 Thank you.

8 JUDGE HATCHER: Thank you, Mr. Clizer. As  
9 promised, I do have some questions from the bench.

10 QUESTIONS BY JUDGE HATCHER:

11 Q. First, Mr. Wilde, can you walk me through and  
12 describe the process for Missouri-American requesting a  
13 Private Letter Ruling from the IRS?

14 A. I'm sure that -- The process by which we go  
15 through is actually established in I think it's a  
16 revenue procedure. I believe it is.

17 MR. HATCHER: Can you lean a little closer to  
18 the microphone?

19 THE WITNESS: Sure.

20 THE COURT REPORTER: Judge, he needs to do  
21 something because I'm having a hard time understanding  
22 him.

23 JUDGE HATCHER: Okay.

24 (Off the record.)

25 THE WITNESS: The process that a taxpayer goes

1 through to request a Private Letter Ruling is documented  
2 in a revenue procedure, which I don't have off the top  
3 of my head, but we can provide if the Commission would  
4 like it. The process is that you indicate to the IRS  
5 that you intend to file a Private Letter Ruling  
6 submission. The IRS might ask you to provide some  
7 preliminary information about the issue that's going to  
8 be considered. Then you have -- the IRS could either  
9 seek written guidance from you in terms of what that  
10 ruling request might be or ask you for a presubmission  
11 conference.

12 In this case they asked for a presubmission  
13 conference. We went to a presubmission conference.  
14 Then we notified -- After the IRS told us yes, we would  
15 accept your ruling request, then we went to the  
16 Commission, notified them, Commission Staff of that and  
17 asked them for the necessary participation in that  
18 ruling request process to move it forward because in the  
19 end the Commission or someone represented by Commission  
20 Staff has to represent that the ruling request that we  
21 submit is complete and accurate and we have to represent  
22 that we included the Staff in that way.

23 Then we make a written submission and only if  
24 the IRS is going to rule in an adverse manner does the  
25 IRS ever contact you again before they issue their

1 ruling request. In this case, there is one particular  
2 ruling that they ruled adversely. So there was a  
3 conference. Staff was invited to that but it wasn't one  
4 of the rulings that they were interested in and did not  
5 participate. It was ruling 3. And it's not actually  
6 one of the rulings that's in question here. So the IRS  
7 then a couple weeks later issued its request or issued  
8 its ruling. That's the process.

9 BY JUDGE HATCHER:

10 Q. Thank you. Who submitted the Private Letter  
11 Ruling request to the IRS?

12 A. It's submitted by the parent and utility  
13 itself.

14 Q. Who drafted it, I guess? Was there an  
15 accounting firm?

16 A. We hired -- Yes, we hired Deloitte to  
17 represent us. They have a nationally known expert on  
18 the normalization rules by the name of Dave Yankee. So  
19 we chose that firm. There's very few people that have  
20 an intimate knowledge with the normalization rules out  
21 there. One of them actually passed away just after the  
22 DCJ (phonetic spelling) was passed. There's even fewer  
23 of them. So we selected Deloitte and that's who drafted  
24 the ruling request for us.

25 Q. Attachment J, and this is the PSC Staff's

1 comments regarding Missouri-American's request for the  
2 Private Letter Ruling. Was Attachment J included with  
3 the whole package or was it sent separately?

4 A. It was included with the whole package, yes.  
5 In fact, we actually submitted it in two parts, the  
6 ruling request in two parts, and then made sure that it  
7 got aggregated. And we got actually notification back  
8 from the IRS that the aggregated copy had made it into  
9 their file. That's typical when you have a large  
10 attachment and how the IRS receives it.

11 Q. So did Missouri-American or Deloitte receive  
12 some type of acknowledgement that Attachment J was  
13 received?

14 A. We received, yes. Any submission we received  
15 a secondary attached notice from the IRS that they  
16 received everything, yes. Deloitte received it and then  
17 they forwarded it to me.

18 Q. Okay. And to your knowledge, were there any  
19 conversations between anyone with Missouri-American or  
20 its agents like Deloitte throughout the Private Letter  
21 Ruling process, conversations with the IRS?

22 A. The only -- After the ruling request was  
23 submitted, the only conversation was the adverse ruling  
24 for number 3 that was limited to conversations around  
25 ruling number 3 and then there was a subsequent email

1 regarding ruling 3 issued by the Company at the request  
2 of the IRS and that was it.

3 Q. Okay. And I am not an accounting expert. The  
4 Private Letter Ruling was rather dense, rather dense  
5 reading, but my understanding is that it indicates that  
6 plant repairs are not subject to accelerated  
7 depreciation; is that correct?

8 A. Yes, because you claimed a repair deduction on  
9 it so it's not available to continue to take accelerated  
10 depreciation on it.

11 Q. Okay. Why are the plant repairs treated  
12 differently?

13 A. It's simply by function of the tax law. So  
14 the normalization rules have their birth -- For a long  
15 time utilities could not take advantage of accelerated  
16 tax depreciation, because the government felt that by  
17 giving them that tax incentive they would just lower  
18 revenues to the federal government and force a subsidy  
19 into the rate, customers' rates. So it wouldn't  
20 actually do its intended purpose which was to  
21 incentivize the utilities and utility commissions to  
22 invest in needed infrastructure.

23 So the intent of the normalization rules is to  
24 foster as an incentive investment in utility  
25 infrastructure. The normalization rules make sure that

1 when the IRS gave the taxpayer and the Commission  
2 essentially, or the customers that incentive, that it  
3 was preserved as an incentive to investment. And if all  
4 you did was turn around the tax benefit right away to  
5 customers, it wasn't an incentive to the utility to  
6 invest, if that makes sense.

7 Q. Okay. What exactly is considered plant  
8 repair?

9 A. So for book purposes or accounting purposes,  
10 they treat, and I always use this analogy, a very small  
11 piece of pipe as a capital addition. For tax purposes  
12 they define large -- tax purposes you define the system  
13 more broadly or the unit of property more broadly. So  
14 when book accountants --

15 (Interruption on Webex.)

16 THE COURT REPORTER: Mr. Wilde, could you  
17 start that answer over again, please.?

18 THE WITNESS: Sure. That happens in these  
19 cases. Can you ask the question again?

20 BY JUDGE HATCHER:

21 Q. Yes. My question was, can you tell me what is  
22 considered, quote, plant repair, close quote?

23 A. Sure. So a tax repair is where the tax unit  
24 of property is defined larger than the book unit of  
25 property allowing for when you actually just replace it

1 the smaller booking of the property that is not  
2 considered a capital addition for tax purposes and you  
3 get to deduct it currently.

4 Q. So then there wouldn't be the same concern of  
5 a normalization violation for repairs completed and  
6 included in the ISRS; is that correct?

7 A. There's not a normalization issued because  
8 it's not a defined protected item pursuant to those tax  
9 rules.

10 Q. Can you tell me why is it that plant repairs  
11 are deducted in the ISRS calculation of deferred taxes,  
12 and I'm referring to your Schedule 2 on your prefiled  
13 testimony, I'm sorry, on Mr. LaGrand's testimony.

14 A. So just as a clarification to their deducted  
15 and the effect of those deductions are included in rate  
16 base as well. So they're deducted to compute the --

17 (Interruption on Webex.)

18 BY JUDGE HATCHER:

19 Q. Sorry, Mr. Wilde. Can you start over? I can  
20 see our court reporter getting ready to ask.

21 A. No problem. So I believe the question again  
22 was to explain why there's repairs on ISRS property.  
23 Again, I believe the statute for what's in ISRS is  
24 property within St. Louis County that is replacement  
25 property so we're dealing with a replacement of existing



1 pipe, and it's not all property that can be replaced  
2 gets a repair. Only some does. Only some qualify as a  
3 repair pursuant to the tax rules. Not every single  
4 capital addition you make for plant is qualified as a  
5 tax repair.

6 So you do a facts and circumstances  
7 determination to determine whether the property would  
8 qualify for repair, and there's estimations made to do  
9 that in this case. But again, it's replacement  
10 properties. So that would be one consideration. Not  
11 new property, it's replacement. Number two is the  
12 replacement is for tax purposes of something less than a  
13 unit of property for tax purposes but is a book  
14 addition. Does that answer your question?

15 Q. Thank you. Can you describe for the record  
16 what are Contributions In Aid of Construction?

17 A. Sure. There's situations where in these cases  
18 it looked like to me like a lot of cases where  
19 relocations are being requested and there's a  
20 replacement of existing property and in these cases that  
21 you would get funded by someone else, whether it be a --  
22 So they contribute to the construction of the property  
23 for book purposes. So let's say that I have to put a  
24 dollar's worth of property in and it's for the benefit  
25 of only one customer or for a specific purpose, you

1 would go to that one customer or that governmental  
2 agency and say we're doing this on your behalf, it's not  
3 for the benefit of the overall customer base and we  
4 would collect the Contribution In Aid of Construction  
5 pursuant to Commission rule.

6 Q. And how are the Contributions In Aid of  
7 Construction included in Missouri-American's ISRS  
8 calculation?

9 A. They're included as -- It would be included as  
10 -- from the tax part of the ISRS or from the book part  
11 because Brian LaGrand might be the best person to  
12 answer.

13 THE COURT REPORTER: Judge, Mr. Wilde.

14 JUDGE HATCHER: Hold on just a minute, Mr.  
15 Wilde.

16 THE COURT REPORTER: I am so sorry but Mr.  
17 Wilde was cutting out on that answer for me.

18 THE WITNESS: I apologize.

19 THE COURT REPORTER: Judge, can I ask the  
20 question again and have him start again?

21 JUDGE HATCHER: Yes. Please go again.

22 (The last question was read back by the court  
23 reporter.)

24 THE WITNESS: And I believe I asked the  
25 hearing examiner if he was seeking that question from a

1 perspective of an overall answer or specific to just the  
2 tax component.

3 BY JUDGE HATCHER:

4 Q. Overall, because I believe what  
5 Missouri-American is contemplating is this net operating  
6 loss started from the moment a pipe was purchased up  
7 until the moment that the ISRS rates are put into  
8 effect. So you're trying to calculate a net operating  
9 loss just for that period. So are Contributions In Aid  
10 of Construction in that calculation and how are they in  
11 that calculation?

12 A. So they would be -- From perspective of  
13 calculating the loss, they would be part of the tax  
14 deductions and part of the accelerated depreciation  
15 deduction that you would calculate for the utility  
16 itself. Lot of companies separate them into two of the  
17 IRS pursuant to rules that they've issued treat that as  
18 one single book tax difference.

19 Q. Okay.

20 A. So from a loss perspective, Contribution In  
21 Aid of Construction would be income or a  
22 contra-deduction.

23 Q. Is that the same way that Contributions In Aid  
24 of Construction is treated by Missouri-American in its  
25 annual report?

1           A.    No.  For financial accounting purposes, a  
2   Contribution In Aid of Construction when it's received  
3   is simply used to reduce overall plant or overall rate  
4   design.  You treat it -- You accrue the Contribution In  
5   Aid of Construction as a liability for book purposes.  
6   You accrue the plant separately for water companies.  
7   Electric and gas utilities would net the two in plant.  
8   Water companies keep a separate liability.  So there  
9   would be a liability to customers for that Contribution  
10  In Aid of Construction, but for tax purposes that would  
11  not be treated as a liability.

12           Q.    Okay.  And I want to turn for a second to  
13  ruling 8.  Can you explain why Missouri-American  
14  submitted the request for this particular IRS ruling?

15           A.    So throughout these proceedings we've cited  
16  two positions.  The first position is that on a separate  
17  incremental basis the ISRS produces a loss.  When you  
18  take into account the income the ISRS property is  
19  generating at the time less the tax deductions that you  
20  are claiming at that particular time, arrive at a  
21  taxable loss on a standalone incremental basis.

22                   Others then argued that no, you have to look  
23  at this more at an aggregate level and IRS -- Even  
24  thought the taxpayer, American-Water, did not think  
25  that's how the IRS would look at the NOL, we said well,

1 then you have to then consider the NOLC that's there as  
2 an incremental deduction available to you during the  
3 period because it's a deduction available to you. So if  
4 you look at a particular tax return, an NOL is an  
5 available deduction at the bottom of that tax return to  
6 arrive at taxable income.

7 The Commission decided to do an aggregate  
8 approach and without respecting the NOLC. So without  
9 treating the NOLC as deductions available to the  
10 Company, they calculated a loss. We said I don't think  
11 the IRS is going -- We said we don't think the IRS is  
12 going to rule that way. So if you look at 8, 9 and 10,  
13 what did they do? 8 just supports what we call the  
14 consistency rules of tax normalization rules. And 8 is  
15 just a different way of looking at 9 and 10.

16 The IRS concluded by the ruling in 9 that  
17 they're looking at the incremental ISRS, not that  
18 anything in aggregate. They said -- But they did  
19 provide analysis pointing that if they had ruled on 10  
20 they would consider the NOLC as a relevant fact. So if  
21 you read the ruling request, that's why 8, 9 and 10  
22 exist. 8 just adds on that says from a perspective of  
23 how much deferred so there's consistency, right? So the  
24 same when you're setting that rate, this being the ISRS  
25 rate, the rate base that you're talking about is the

1 same -- is the source of the deductions that you're  
2 talking about and the ADIT that you're talking about.  
3 And there's no deferral that can be inferred throughout  
4 that process. If you look at the tax guidance or things  
5 that are cited in there, the IRS is starting to talk  
6 about was there a deferral or was any of the accelerated  
7 depreciation tax deductions deferred by virtue of an  
8 NOL.

9           And again, our argument has consistently said  
10 that when you look at this on an incremental basis, yes,  
11 there's a loss. When you add up repair deductions,  
12 accelerated tax depreciation, even if you include CIAC,  
13 there's \$39.6 million of losses in that of deductions  
14 available to the company in that year that's cited in  
15 that fact and there's no income on an incremental basis  
16 that's coming through.

17           If you add in Construction In Aid of  
18 Construction of a million dollars, you still have a \$38  
19 million loss. But the IRS doesn't say they have to  
20 include a \$38 million loss. They say you only have to  
21 include the loss related to accelerated depreciation.  
22 So then they tell you to do it with or without tax. And  
23 that's what we did to come up with the 35,000. We  
24 figured out the portion that was related to just  
25 accelerated depreciation.

1 Q. Okay.

2 THE WITNESS: Hopefully, court reporter, did I  
3 speak loud enough?

4 THE COURT REPORTER: I'm doing my best. It's  
5 very difficult.

6 THE WITNESS: I'm sorry. I'll hold the phone  
7 up even further to my face.

8 JUDGE HATCHER: Okay. Last question for me.  
9 And Mr. Cooper, heads up, and Mr. Wilde, please don't  
10 answer for a second after I ask the question because it  
11 may touch on some confidential information and I'm  
12 looking to Mr. Cooper to see if he has any objections.  
13 BY JUDGE HATCHER:

14 Q. How would you address the concerns raised by  
15 Mr. Oligschlaeger in his rebuttal testimony about any  
16 future application of ruling 8 and what the meaning of,  
17 quote, recovered in rates, end quote, in ruling 8  
18 signifies?

19 MR. COOPER: Your Honor, I think that's all  
20 part of essentially the public version of that Private  
21 Letter Ruling. So I think we're okay.

22 BY JUDGE HATCHER:

23 Q. Okay. Mr. Wilde?

24 A. So again, I think it just supports ruling 8  
25 and 9 or 9 and 10. So if you looked at it from an

1 aggregate perspective, and Mr. Oligschlaeger actually  
2 admits in several versions of his testimony in these  
3 past ISRSs that this Commission and he himself has  
4 allowed NOLCs to be included. So I don't believe ruling  
5 8 expands that application of the law at all. If  
6 there's an NOLC at the beginning and end of year, then  
7 you must calculate how much of that NOLC that exists is  
8 protected pursuant to the normalization rules and  
9 include that in rate base regardless of whether -- it  
10 just really supports that it hasn't accrued to the  
11 deferred tax expense calculation.

12 I think if you read -- Mr. Oligschlaeger  
13 quotes a section from his own writing that says hey,  
14 we're looking at revenues from the future before we'll  
15 let you book a deferred tax. That's really not the  
16 case. We're looking at the revenues available to the  
17 company as of the date of the measurement and the  
18 deductions that are claimed. So unless you have an NOLC  
19 that you're carrying, you're not limited to the  
20 deductions you can take. So all we're asking is what  
21 this Commission has historically done in the past is to  
22 put an NOLC where it belongs.

23 The ISRS I understand is a more complicated  
24 issue in that revenues are kind of generated -- In that  
25 first year of an ISRS, you haven't yet collected any



1 rates regarding that property or prior property. In a  
2 rate case, you are able to put those deferred taxes  
3 through the provision except for if it's deferred  
4 because of an NOLC. I don't think there's any big  
5 change.

6 JUDGE HATCHER: Okay. Thank you, Mr. Wilde.  
7 We are at Commissioner questions. And I took the lead  
8 on that. Are there any other Commissioner questions?  
9 Okay. Hearing none, we return to recross. First is  
10 Mr. Johnson for Staff.

11 MR. JOHNSON: Judge, I don't believe I have  
12 any questions. Thank you.

13 JUDGE HATCHER: Thank you. And Mr. Clizer?

14 MR. CLIZER: That was certainly a lot of  
15 ground that was just covered there. I'm going to try  
16 and keep this short.

17 RECROSS-EXAMINATION BY MR. CLIZER:

18 Q. Mr. Wilde, help me out. When the Company  
19 calculated the net operating loss that it is claiming as  
20 necessary to correct for in these cases, for the  
21 previous three ISRS cases, effectively what the Company  
22 did is it took accelerated depreciation expense and  
23 offset that against a revenue of zero dollars; is that  
24 correct --

25 A. That's the short math that happened, but

1 that's not consistent necessarily with. We tried to do  
2 it in the simplest manner that was possible to get to  
3 the right answer.

4 Q. Is zero dollars of revenue offset because --  
5 again, the Company's position has always been they have  
6 no revenues when these pipes are put in the ground and  
7 accelerated depreciation expense is what's being offset  
8 against that.

9 A. We considered the revenue that was collected  
10 pursuant to the ISRS at that point in time in the ISRS.  
11 We considered the repair deductions for purposes of the  
12 overall loss. We considered the CIAC income. We  
13 considered the accelerated depreciation loss deductions.  
14 Those together produce an NOL. Then we applied the with  
15 and without test. Did we do the long math for that and  
16 then treat -- then deal with the Contribution In Aid of  
17 Construction DTA perfectly, no. But if you do what we  
18 did those things, you wouldn't get to a different answer  
19 than the \$35,000. It's just a different way of  
20 calculating it.

21 Q. What was the total net operating loss the  
22 Company came up with for the three cases that it's  
23 attempting to correct for here?

24 A. I don't have that calculation in front of me.  
25 We didn't submit that calculation because again -- but I

1 think you look at the revenue requirement for the three  
2 cases and you look at the deductions that were submitted  
3 you could calculate that and it would be a loss.

4 MR. CLIZER: I don't think I'm going to get  
5 anywhere with you so I'll just let it go. Thank you. I  
6 have no further questions.

7 JUDGE HATCHER: Thank you, Mr. Clizer. We  
8 come now to redirect, Mr. Cooper.

9 MR. COOPER: Thank you, Your Honor.

10 REDIRECT EXAMINATION BY MR. COOPER:

11 Q. Mr. Wilde, there was questions about the  
12 repairs allowance piece of this and just to kind of  
13 provide some context for it, in the three prior ISRS  
14 cases the Company when it proposed an NOL, would it be  
15 accurate to say that that NOL was built upon both the  
16 impact of accelerated depreciation and the repairs  
17 allowance?

18 A. Yes. The \$39.6 million would have both  
19 numbers in it, but again the loss is not just simply the  
20 loss. You have to provide the with and without tests.

21 Q. Here's where I want to go with that. In the  
22 Private Letter Ruling, and both myself and I think  
23 Mr. Johnson, counsel for Staff, noted that the Private  
24 Letter Ruling indicated that there was a normalization  
25 violation in regard to the accelerated depreciation

1 piece, correct?

2 A. Yes.

3 Q. But did not so indicate that there was a  
4 normalization violation as to the repairs allowance  
5 piece, correct?

6 A. That's correct.

7 Q. So the adjustment that's being proposed in  
8 this case by the Company is based solely upon the  
9 accelerated depreciation side of things and does not  
10 include the repair allowance, correct?

11 A. No, it would not include the repair allowance,  
12 because it wouldn't attribute any loss under the with  
13 and without test. It wouldn't attribute any loss to the  
14 repair allowance.

15 Q. And the PLR told you how to separate out the  
16 repair allowance and that that would not be included  
17 here, correct?

18 A. It told you to apply the with and without test  
19 and said look at the loss and it cited what loss to look  
20 at and then it cited to apply the with and without test.

21 Q. So here's where I'm going. In the prior three  
22 cases there was a much larger revenue requirement at  
23 issue in those cases -- than the adjustment that's being  
24 proposed here as a cure, correct?

25 A. That's correct.

1 Q. And that's a function of the Private Letter  
2 Ruling, correct?

3 A. That's correct.

4 Q. You were asked questions about the impact of  
5 CIAC, and I know you said that Mr. LaGrand does those  
6 calculations, but to the extent you are familiar with  
7 this calculation in the deferred taxes calculation in  
8 this case and the two prior cases, is there a line item  
9 for taxable income contributions that's taken into  
10 account by the Company?

11 A. If you look at the tax calculation, you'll see  
12 the Contribution In Aid of Construction taxable income  
13 reconciled for '18 and '19 you'll see it there done that  
14 way.

15 Q. In '20 as well?

16 A. In '20 as well.

17 Q. You were asked some questions about the impact  
18 of ruling 8. Do you remember that?

19 A. Yes.

20 Q. For purposes of the adjustment that's being  
21 proposed by the Company in this case, is ruling 9  
22 sufficient to justify that adjustment?

23 A. Yes.

24 Q. And if based upon ruling 9 you make that  
25 adjustment, there's no need to treat ruling 8, is there?

1 A. No.

2 Q. In answer to one of the questions you made a  
3 comment that the reflection of the NOLC was being done  
4 like the Commission had done in the past, I think. Do  
5 you remember that?

6 A. Say that again.

7 Q. Yeah. I think you made a statement that you  
8 were wanting the net operating loss carryforward, the  
9 NOLC, to be reflected here like the Commission had  
10 reflected it in the past. Does that sound familiar?

11 A. I don't think I used those exact words, but  
12 yes, what's the question?

13 Q. Well, I'm just, any reference you make to  
14 prior reflection of an NOLC in ratemaking by this  
15 Commission would be in reference to a general rate case,  
16 correct?

17 A. Right. What I'm saying is how 8 would apply  
18 in a general rate case, because I was asked if it had  
19 impact on a general rate case, I would say then you  
20 would look at the IRS analysis in this ruling regarding  
21 ruling 10 which they didn't go -- they do tell that they  
22 did provide analysis. They didn't provide a ruling but  
23 they provided analysis and factual. Essentially that  
24 ruling said but for 9 in an ISRS proceeding in 10 if you  
25 looked at this ISRS more on an aggregate basis you'd

1 have to look at the NOLC. Again, Mr. Oligschlaeger has  
2 indicated repeatedly in these cases that if there's an  
3 NOLC at the end of -- they generally do include the NOLC  
4 in the rate base calculation.

5 Q. You were asked some questions by Mr. Clizer  
6 about the income that was considered in the Company's  
7 tax calculation and he asked you whether zero was the  
8 amount of income considered, I think, generally. Do you  
9 remember that?

10 A. Say that again.

11 Q. So Mr. Clizer was asking you about what, I  
12 guess I said income, revenues were considered as a part  
13 of the Company's tax calculation, correct?

14 A. We used the same revenue consideration as what  
15 would have been used by Mr. LaGrand in the calculation  
16 as a consistency perspective of what he would have  
17 consumed as the revenues available to the Company as of  
18 the measurement date. Again, the IRS does make mention  
19 that it's the revenue as of -- not the revenue  
20 necessarily but the income, taxable income available to  
21 the Company as of the measurement date --

22 Q. So here we're talking about a series of four  
23 cases, correct?

24 A. Correct.

25 THE COURT REPORTER: I'm sorry? Mr. Cooper, I

1 missed the end of his statement.

2 THE WITNESS: So yes, we would have based it  
3 on the income available to the Company as of the  
4 measurement date of the ISRS rate base.

5 BY MR. COOPER:

6 Q. And because this is a series of so far four  
7 ISRS cases, when you're in cases two, three and four,  
8 there are ISRS revenues to be taken into account,  
9 correct?

10 A. That's correct.

11 MR. COOPER: That's all the questions I have,  
12 Your Honor. Thank you.

13 JUDGE HATCHER: Thank you. Let's pause for a  
14 second and note that it is five to 3:00. We have been  
15 in this hearing for approximately two hours. We've  
16 finished two witnesses. We have four to go. I'd like  
17 to check in with counsel about taking a break and I'd  
18 also like to look to my court reporter to see if she  
19 would like to take a break. I'll start with counsel and  
20 I'll let the court reporter nod or shake her head.  
21 Mr. Cooper, could we take a ten-minute break now?

22 MR. COOPER: I would not object.

23 JUDGE HATCHER: Do you have any thoughts about  
24 how long re-examination of the next four witnesses might  
25 go?



1 MR. COOPER: I don't know. I think  
2 Mr. Johnson may be in a better position to address some  
3 of that. I think a couple of the witnesses at least may  
4 move pretty quickly.

5 JUDGE HATCHER: Okay. Thank you. Mr. Clizer?

6 MR. CLIZER: I do not object to a break. I  
7 would prefer a break. I do not expect that either --

8 JUDGE HATCHER: Sorry about that, Mr. Clizer.  
9 Mr. Clizer, go ahead.

10 MR. CLIZER: I do not expect that either Ali  
11 Arabian or Matthew Barnes will have significant cross  
12 and would therefore go quickly. I cannot speak as to  
13 the other two.

14 JUDGE HATCHER: Okay. And Mr. Johnson?

15 MR. JOHNSON: I do not object to a break and  
16 from my standpoint I do not anticipate having any  
17 substantial cross.

18 JUDGE HATCHER: Let's take 10 minutes. We'll  
19 have an intermission, stretch our legs. I'm going to  
20 call this three o'clock even though it's three till. So  
21 3:10, ten after 3:00 is when we will resume. And I will  
22 mute the audio stream and put the live stream  
23 intermission sign up. Thank you all. See you at 3:10.

24 (A break was taken.)

25 JUDGE HATCHER: Okay everyone. Welcome back

1 from intermission. We are continuing on the record. We  
2 are at the Office of Public Counsel's witness, John  
3 Riley, up for his testimony. Mr. Riley, if you would  
4 please unmute yourself and I'll swear you in.

5 (Witness sworn.)

6 JUDGE HATCHER: Thank you. And Mr. Clizer,  
7 your witness.

8 MR. CLIZER: Mr. Riley --

9 THE WITNESS: Yes, sir.

10 MR. CLIZER: -- I would suggest that you mute  
11 your computer. You're producing some feedback.

12 JOHN S. RILEY,  
13 called as a witness, being sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. CLIZER:

15 Q. Okay. Mr. Riley, can you please state and  
16 spell your name for the record?

17 A. John S. Riley.

18 Q. All right. By whom are you employed and in  
19 what capacity?

20 (Off the record for technical difficulties  
21 with Mr. Riley's connection.)

22 JUDGE HATCHER: Mr. Clizer, please go ahead.

23 BY MR. CLIZER:

24 Q. As I was saying, because we've had such  
25 difficulties, I'm just going to start again at the top.

1 Mr. Riley, can you please state and spell your name for  
2 the record?

3 A. John S. Riley, R-i-l-e-y.

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

5 A. I'm employed by the Missouri Office of the  
6 Public Counsel, Public Utility Accountant III.

7 Q. Have you prepared or caused to be prepared  
8 testimony for today, direct testimony in this case?

9 A. Yes, I have.

10 Q. Have you also prepared or caused to be  
11 prepared rebuttal testimony for this case?

12 A. Yes, I have.

13 Q. With regard to your direct testimony, do you  
14 have any changes?

15 A. I have one change.

16 Q. What would that be?

17 A. Page 8. On page 8, line 3, the pre-tax  
18 incremental revenues would then be the correct number  
19 should be 9,684.158, 9-6-8-4-1-5-8.

20 Q. Thank you. You said that was your only change  
21 to the direct testimony, correct?

22 A. Yes, sir.

23 Q. Are there any changes that needed to be made  
24 to the rebuttal testimony?

25 A. Just one.

1 Q. Oh.

2 A. Page 8, line 9 should read -- It reads with  
3 shortened schedule, I was not been provided a copy. It  
4 should read I had not been provided a copy. So remove  
5 the was and replace it with a had.

6 Q. Had you also prepared an amendment to your  
7 rebuttal to correct mistakes?

8 A. Yes, that's correct. Yes, sir.

9 Q. And those were again also intended to correct  
10 the mistake or error or omission in the rebuttal  
11 testimony?

12 A. Yes, sir, in rebuttal.

13 Q. All right. In light of the one change that  
14 you just identified and the amendments that you filed,  
15 are there any other changes to the rebuttal?

16 A. No, sir.

17 MR. CLIZER: All right. Your Honor, I'm going  
18 to offer Mr. Riley's direct, which should be if my  
19 recollection is correct OPC Exhibit 201, Mr. Riley's  
20 rebuttal, which if my recollection is correct should be  
21 OPC Exhibit 202, and the amendments to Mr. Riley's  
22 rebuttal as OPC Exhibit 203.

23 JUDGE HATCHER: Okay. I'm going to take them  
24 all as a group. Mr. Cooper, do you have any objections  
25 to the admittance of those three exhibits?

1 MR. COOPER: I do not.

2 JUDGE HATCHER: Mr. Johnson, do you have any  
3 objections to the exhibits?

4 MR. JOHNSON: No objection.

5 JUDGE HATCHER: Without objection, all three  
6 exhibits both Confidential and Public versions are  
7 entered into the hearing record.

8 (OPC'S EXHIBITS 201, 202 AND 203 BOTH  
9 CONFIDENTIAL AND PUBLIC WERE RECEIVED INTO EVIDENCE AND  
10 MADE A PART OF THIS RECORD.)

11 JUDGE HATCHER: Mr. Clizer, go ahead.

12 MR. CLIZER: You have reminded me, Judge, I  
13 was intending originally to ask that Exhibit 201, the  
14 direct testimony, actually be marked as solely public  
15 following the decision regarding the confidentiality of  
16 the public version of the Private Letter Ruling. I  
17 honestly will just leave it at the Commission's  
18 discretion whether or not it feels that it's beneficial  
19 to have that marked as public or not.

20 JUDGE HATCHER: No. I'd prefer to take care  
21 of that here. Mr. Cooper, do you have any objections to  
22 Mr. Clizer's suggestion?

23 MR. COOPER: I don't know that I can respond  
24 right now without going back through that testimony  
25 section by section, Judge. I don't mind doing that, but

1 I don't think I could do it on the spot here.

2 JUDGE HATCHER: Okay. Let me think about  
3 that, Mr. Clizer, how I want to handle that. Go ahead  
4 with your examination.

5 MR. CLIZER: I have completed my examination  
6 and I tender the witness for cross.

7 JUDGE HATCHER: All right. Thank you. First  
8 we have Mr. Johnson?

9 MR. JOHNSON: I have no questions, Judge.

10 JUDGE HATCHER: And Missouri-American?

11 MR. COOPER: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. COOPER:

13 Q. Mr. Riley, in your rebuttal testimony you  
14 indicate that Missouri-American failed to consider CIAC  
15 in its net operating loss calculation, correct?

16 A. Yes, sir.

17 Q. Let's turn for a minute to your amendment to  
18 rebuttal testimony and the Schedule JSR-AR-1. Do you  
19 have that in front of you?

20 A. Yes, sir.

21 Q. And if you will turn to page 4 of 8 within  
22 that schedule. Are you there?

23 A. Yes, sir.

24 Q. And that's a page that the top says  
25 Missouri-American ISRS #18 Deferred Taxes, correct?

1 A. That's correct.

2 Q. And do you see on line 30 that there's a line  
3 for Taxable Income-Contributions?

4 A. Yes, sir.

5 Q. Let's turn over to page 6 of 8 in that same  
6 schedule, and that is again titled Missouri-American and  
7 now ISRS #19 Deferred Taxes, correct?

8 A. Yes, sir.

9 Q. And on line 30 again there's a line Taxable  
10 Income-Contributions, correct?

11 A. That's correct, sir.

12 Q. And then again if we turn to page 8 of 8 in  
13 that same schedule, again have Missouri-American ISRS  
14 #20 Deferred Taxes, correct?

15 A. That's correct, sir.

16 Q. And again line 30 is Taxable  
17 Income-Contributions, correct?

18 A. That's what it says, yes.

19 Q. You also allege in your rebuttal testimony  
20 that the Private Letter Ruling does not contemplate the  
21 existence of ongoing revenues related to the pipes in  
22 question arising from the sale of water flowing through  
23 those pipes. Is that a correct statement?

24 A. I think so, yes.

25 Q. And now you would agree with me, wouldn't you,

1 and I quoted this language in my opening, but you would  
2 agree with me, wouldn't you, that the Private Letter  
3 Ruling recognizes that in this case the parent on a  
4 consolidated basis and the taxpayer, which would be  
5 MAWC, on a separate company basis estimate that taxable  
6 income was earned and thus NOLC was utilized. Do you  
7 remember that?

8 A. Not really but go ahead.

9 Q. Well, do you have Mr. Wilde's direct in front  
10 of you?

11 A. Yes, sir.

12 Q. And if you go to Schedule JRW-2, which is the  
13 private letter ruling, correct?

14 A. Yes, I don't have the schedules.

15 Q. You don't have the schedules. Okay. If the  
16 IRS knew or repeated the fact that there would be  
17 taxable income, and in this case 2018, they clearly knew  
18 there were revenues other than those from ISRS, correct?

19 A. Do you want to repeat your question again,  
20 sir?

21 Q. I guess my question is really in the PLR it's  
22 contemplated, isn't it, that the Company has net  
23 operating income in 2018?

24 A. I'm not quite sure if they contemplated that  
25 or not. I've spent more time studying the 12 questions.



1 Q. Okay. Let's --

2 A. I don't recall --

3 THE COURT REPORTER: Mr. Riley, could you  
4 start again.

5 THE WITNESS: I said as far as the Private  
6 Letter Ruling goes, I'm not quite sure what the IRS  
7 determined as far as net income goes. Go ahead.

8 BY MR. COOPER:

9 Q. In the end, the language of the Private Letter  
10 Ruling, and I suppose the language of the request, would  
11 tell us what was indicated in regard to net operating  
12 income as far as 2018, correct?

13 A. Sir, I'm not following your line of  
14 questioning. The Private Letter Ruling discussed net  
15 operating losses within a surcharge.

16 Q. But you don't remember -- But you don't have  
17 the Private Letter Ruling in front of you, do you?

18 A. Yeah, I do. It's not Mr. Wilde's exhibit. I  
19 correct myself. It is Mr. Wilde's exhibit.

20 Q. So within the exhibit will you turn to page 7  
21 of 23.

22 A. I'm there.

23 Q. And in the middle of the page there's a  
24 paragraph that starts on a consolidated basis. Do you  
25 see that?

1 A. I see that.

2 Q. And at the end of that paragraph there's a  
3 sentence that says, I believe this is public because  
4 it's part of the public version, for year two, parent on  
5 a consolidated basis and taxpayer on a separate company  
6 basis estimate that taxable income was earned and thus  
7 NOLC was utilized, correct?

8 A. Okay. That's correct, yes, sir.

9 Q. Now, when you talk about the PLR does not  
10 contemplate the existence of ongoing revenue, I assume  
11 you're talking about revenues from the base rates for  
12 Missouri-American, correct?

13 A. Well, the Company didn't mention any other  
14 revenues.

15 Q. What revenues -- Well, we just talked about  
16 the fact that the Company identified net operating  
17 income in the year in question, but I want to know what  
18 you're talking about when you talk about the existence  
19 of ongoing revenue?

20 A. Well --

21 Q. Is it the base rates --

22 A. The argument that Missouri-American has  
23 brought up is that --

24 THE COURT REPORTER: Judge, Judge Hatcher --

25 THE WITNESS: -- prior to the ISRS rates going

1 into effect they don't have any revenues to offset the  
2 accelerated depreciation in this case, in this ISRS  
3 case, and the accelerated depreciation represents the  
4 net operating loss that they're claiming in this case,  
5 because no ISRS ratemaking has any revenues when they  
6 put the pipe in the ground.

7 BY MR. COOPER:

8 Q. But the only other revenues that you could be  
9 referring to are those revenues that come from the  
10 Company's base rates, correct?

11 A. Correct.

12 Q. And those would be the revenues that are the  
13 result of rates that were set in Missouri-American's  
14 last general rate case WR-2017-0285?

15 A. I would think that and the other three ISRS  
16 cases I guess if rates go forward.

17 Q. And if we talk about the rates, the base  
18 rates, the ones that were set in WR-2017-0285, would you  
19 agree that they were based on a true-up period ending  
20 December 31 of 2017?

21 A. Which case?

22 Q. WR-2017-0285, the Company's last general rate  
23 case.

24 A. Okay, yes, I'll take your word for it that  
25 there was a true-up.

1 Q. Does that sound right December 31, 2017?

2 A. I'll have to take your word for it. I'm not  
3 sure.

4 Q. Let's go about it this way. Whatever the  
5 true-up date was the rates set in that case would only  
6 have contemplated plant in service or plant that was  
7 placed in service prior to the true-up date, correct?

8 A. That I believe is correct.

9 Q. And Missouri-American's ISRS, of course, it  
10 only applies to ISRS eligible plant put into place in  
11 St. Louis County, correct?

12 A. You kind of broke up there. I'm sorry.

13 Q. Sorry. MAWC's ISRS only applies to ISRS  
14 eligible plant in St. Louis County, correct?

15 A. I guess St. Louis County, but ISRS case the  
16 only thing that's eligible is the ISRS related plant. I  
17 will assume it's in St. Louis County.

18 Q. The ISRS -- The statute only allows for St.  
19 Louis County anyway, correct?

20 A. I'm thinking so, yes.

21 Q. Do you know how much non-ISRS eligible plant  
22 Missouri-American has placed in St. Louis County since  
23 the true-up in its last general rate case?

24 A. No, I do not.

25 Q. You probably don't either know how much plant

1 Missouri-American has placed in service around the state  
2 since that true-up date either, do you?

3 A. No.

4 MR. COOPER: That's all the questions I have  
5 for now, Your Honor.

6 JUDGE HATCHER: Thank you. The bench has a  
7 couple questions for Mr. Riley.

8 QUESTIONS BY JUDGE HATCHER:

9 Q. Mr. Riley, is a net operating loss only a tax  
10 item or is it also a regulatory item?

11 A. It is my understanding that the net operating  
12 loss, which is a tax return item, is included in  
13 ratemaking procedures.

14 Q. Okay. And if I understand your testimony, you  
15 calculated a net operating loss for the ISRS periods at  
16 issue. Is my understanding correct?

17 A. Well, I wouldn't say I actually calculated it.  
18 I took the calculations from the Company on their  
19 exhibits and pulled those out and listed them in my  
20 testimony.

21 Q. And you listed them as -- labeled them as a  
22 net operating loss. You had listed a CAIC for each of  
23 the four ISRS cases and then a net operating loss from  
24 each of those four which then I took one step further  
25 and I could calculate whether a particular ISRS period

1 had a loss or not. Can you explain to me the  
2 distinction you're making that a net operating loss is  
3 only a tax return item?

4 A. Well, what the Company has done, because an  
5 ISRS is a prospective ratemaking feature, they have  
6 claimed a lack of income as an income recognition to  
7 claim a net operating loss which is a tax return item  
8 which is why we have the IRS involved in this. What I  
9 have actually said is if you're going to pull out  
10 accelerated depreciation and claim a loss on that  
11 because you don't have any revenues, I point to CIAC as  
12 a revenue that is clearly within the ISRS period because  
13 they actually calculated it in their exhibits and  
14 schedules. And now that since the tax act has been  
15 enacted, CIAC is now a taxable income then I place the  
16 CIAC in the same category as the net operating loss.

17 Both of them are tax return items for  
18 ratemaking. CIAC is actually a deduction from rate  
19 base. But as far as apples and apples, the tax return  
20 items, those two should be matched.

21 Q. Okay. And I think this is my last question.  
22 Your testimony and a lot of the Public Counsel's  
23 arguments are based on the fact or the reading of the  
24 Commission decisions in these previous ISRS cases that  
25 the Commission found there was no net operating loss.

1 Would your analysis change if I changed the wording of  
2 that to be the Commission found that Missouri-American  
3 didn't provide sufficient evidence of a net operating  
4 loss during that period? Would that allow you to then  
5 agree that there could be a net operating loss within  
6 that period and now it's a matter of calculations?

7 A. No. I'm sorry. I couldn't -- I believe that  
8 a net operating loss is a tax return item which requires  
9 a tax return completed. I don't believe that you can  
10 have a net operating loss on an interim basis but -- and  
11 they also didn't have net operating losses on their last  
12 two tax returns. So I'm not sure if your changing the  
13 wording would change my opinion of it. I don't see a  
14 net operating loss any way around this.

15 Q. Okay. So as I understood your testimony then,  
16 kind of the first points in your testimony was, and I'm  
17 summarizing, that the PLR is basically meaningless  
18 because the IRS assumed the facts that there was a net  
19 operating loss and just went from there. Second, if the  
20 Commission you don't believe that, I would argue that  
21 the Company didn't include CAIC and that should be  
22 included in order to come up with the number and then  
23 third is the Company hasn't correctly included all of  
24 the revenues, for example, revenues that start when the  
25 pipe is placed in service and water is running through

1 it even though those revenues are from the previous  
2 case. Am I summarizing that testimony fairly?

3 A. I think you did a very good job of  
4 summarizing.

5 Q. Okay. Then are you saying that the Private  
6 Letter Ruling that contemplates net operating loss  
7 occurring within a short ISRS time period is incorrect  
8 because it is only a tax return item and could not be  
9 calculated for a shorter period?

10 A. Yes, I believe that. Well, they didn't have a  
11 net operating loss for the entire year. So I think it  
12 would be hard to say that there's a net operating loss  
13 for an interim period also, but all the publications  
14 that I've read and the IRS website all indicate in order  
15 to claim a net operating loss you had to file a tax  
16 return. To claim a net operating loss because you  
17 didn't have revenues prior to the ISRS rates being set,  
18 I don't think that's a correct assumption.

19 Q. Okay. And I really do mean it this time. I  
20 think this is my last question. I'm sorry. Can you  
21 give me your reaction, Mr. Riley, to the argument that  
22 the ounce of prevention here, the 35,000 approximately  
23 cure, is well worth avoiding the potential sanctions by  
24 the IRS even if we don't fully know exactly what the IRS  
25 is saying here in its PLR?



1           A.     Well, I think including the 35,000 is wrong on  
2 its face regardless of the amount of money. So I firmly  
3 believe the IRS did not confirm a net operating loss.  
4 So I still believe that there's not a normalization  
5 violation. To be honest, until I actually see that the  
6 IRS say yes, there is an interim period net operating  
7 loss, I'm going to have say I reject all ideas of  
8 allowing a 35,000 in there just to make the case go  
9 away. I think the issue is bigger than that. It's  
10 bigger than 35,000. I mean, that's pennies when we're  
11 talking about how big the Company is, but the issue  
12 itself is huge. So I would say no.

13           Q.     How would you proceed that the Commission move  
14 forward then if we follow your argument and say no? Is  
15 OPC going to ask for a PLR or are we going to direct  
16 Missouri-American to ask for another PLR? What would be  
17 your thought?

18           A.     Well, our essential argument is that the  
19 Internal Revenue Service did not confirm the net  
20 operating loss. So we believe the Commission should act  
21 the same way that it did in the last two cases and say  
22 we don't believe there's a net operating loss. We don't  
23 believe that the IRS said there's a net operating loss.  
24 And they said in testimony I don't believe they got  
25 enough information to actually say there's a net

1 operating loss or not. But I would have to ask somebody  
2 if not the Company, Public Counsel. I've started to  
3 look into how to contact the IRS, question them. They,  
4 of course, aren't very forthcoming with answers unless  
5 you're rather official about it. I believe the  
6 Commission should give the same report and order that  
7 they did in the first two and let the Company contact  
8 the IRS and have them certify, for lack of a better  
9 term, certify net operating loss or ask them how they're  
10 going to correct it on their books.

11 JUDGE HATCHER: Okay. Thank you. I'm sorry I  
12 took up a lot of time with those.

13 Are there any Commissioner questions for  
14 Mr. Riley? Okay. Hearing none, we will go back to  
15 recross-examination of Mr. Riley. First will be Staff,  
16 Mr. Johnson?

17 MR. JOHNSON: Thank you, Judge. I think I  
18 only have very few questions.

19 RECROSS-EXAMINATION BY MR. JOHNSON:

20 Q. Mr. Riley, the Judge asked you about inclusion  
21 of NOLs in an ISRS, and I believe you responded that you  
22 did not believe an NOL can be determined on an interim  
23 basis; that there has to be a tax return; is that  
24 correct?

25 A. I believe so, yes, sir.

1 Q. So assuming in a given tax year a utility were  
2 to show generation of a new NOL amount, would it be your  
3 position that that NOL should be reflected in an ISRS?

4 A. No, I do not.

5 Q. Do you believe an NOL could ever be reflected  
6 in an ISRS?

7 A. If it ended I guess at the end of a tax year I  
8 guess it could be.

9 Q. If the ISRS period ended at the end of a tax  
10 year; is that what you're saying?

11 A. Well, that's speculating there. In order to  
12 have an NOL, you're going to have -- according to the  
13 IRS publications, you're going to have to have a tax  
14 return. It would be -- To be in an interim period, say  
15 you have a net operating loss for an eight-month period  
16 but not have a tax loss at the end of the year, I guess  
17 you're kind of contradicting yourself there.

18 The Commission has acknowledged that an NOL is  
19 a tax return item. And a tax return is an annual thing.  
20 So net operating losses are built in by several  
21 different things. There's more than just accelerated  
22 depreciation and repairs that are going to cause a net  
23 operating loss. It's not as simple as having  
24 accumulated deferred income tax which you calculate  
25 straight on the assets. So I don't believe you can have

1 a net operating loss in an interim period.

2 Q. Would you agree with me that an ISRS is  
3 calculated based upon the amount of ISRS loss eligible  
4 for recovery during the period in which the surcharge  
5 will be in effect --

6 THE COURT REPORTER: I'm sorry.

7 THE WITNESS: That's my understanding, yes.

8 THE COURT REPORTER: Mr. Johnson, could you  
9 repeat that question?

10 MR. JOHNSON: Yes. The question was and would  
11 you agree with me that an ISRS will be collected based  
12 upon the amount of ISRS costs that are eligible for  
13 recovery during the period in which the surcharge will  
14 be in effect and upon the applicable customer class  
15 billing determinants utilized in designing the water  
16 company's corporation's customer rates?

17 With that, I think that concludes my  
18 questions. Thank you.

19 JUDGE HATCHER: Okay. And recross from  
20 Missouri-American, Mr. Cooper?

21 MR. COOPER: Yes, Your Honor.

22 RECROSS-EXAMINATION BY MR. COOPER:

23 Q. Mr. Riley, do you still have that schedule  
24 from Mr. Wilde's testimony that we talked about earlier,  
25 JRW-2?

1 A. Yes, sir.

2 Q. Would you agree with me that the IRS  
3 recognized or noted the Commission's prior decision as  
4 to this issue?

5 A. I can't tell you if they recognized it.

6 Q. Well, you have it in front of you, I take it?

7 A. I'm sure I could probably take you to the  
8 paragraph where it mentioned that all the parties to the  
9 case agree.

10 THE COURT REPORTER: They were both talking at  
11 the same time.

12 MR. COOPER: I apologize.

13 BY MR. COOPER:

14 Q. I think my initial question was whether  
15 Mr. Riley believed that the IRS recognized the  
16 Commission's decision in the Private Letter Ruling.

17 A. And I'm not sure if I can use the word  
18 recognized. They do include it -- Missouri-American  
19 Water included discussion of the case in their  
20 presentation. What the IRS does with it, I'm not sure.

21 Q. So again if you have Schedule JRW-2 before  
22 you, please turn to page 9 of 23.

23 A. Okay.

24 Q. And I don't know, maybe two-thirds of the way  
25 down the page, there's a paragraph that starts with

1 differing assertions. Do you see that?

2 A. Yes, sir.

3 Q. Again, this is information from the public  
4 version so not confidential, but would you agree with me  
5 that the Private Letter Ruling states at that point that  
6 differing assertions remain as part of the surcharge  
7 case. Ultimately the Commission in its final order  
8 determined that because there was not an NOL expected to  
9 be generated in year four, no portion of the NOLC  
10 deferred tax asset can be associated with the surcharge  
11 property. Is that a correct reading?

12 A. Yeah, it is, sir.

13 MR. COOPER: That's all the questions I have,  
14 Your Honor.

15 JUDGE HATCHER: Thank you. And we have  
16 redirect. Mr. Clizer?

17 MR. CLIZER: Thank you, Your Honor.

18 REDIRECT EXAMINATION BY MR. CLIZER:

19 Q. There we go. Mr. Riley, can you hear me now?

20 A. Yes, sir.

21 Q. Okay. There we go. I thought I had a  
22 problem. You were just asked a question by the attorney  
23 from Missouri-American Water regarding what the  
24 Commission recognizes and you were discussing I think at  
25 a certain point how does the IRS handle the facts

1 presented to it in a Private Letter Ruling request?

2 A. Well, it's my understanding and from what I've  
3 read from the IRS website is that they take the facts  
4 presented to them and apply them and come up with a  
5 legal determination.

6 Q. And in this case was it an unambiguously  
7 presented fact that the Company had a net operating  
8 loss?

9 A. I wouldn't say unambiguous. They pointed out  
10 that they had a net operating loss.

11 Q. So your understanding then is the IRS took  
12 that at face value and made the determination based on  
13 that fact?

14 A. That is my understanding. That's how I read  
15 the answers to the question in the letter ruling.

16 Q. All right. You were asked several questions  
17 both by the Commission and Staff regarding, you know, a  
18 net operating loss in the period in question here. I  
19 think at one point the Commission asked a question  
20 essentially what would happen if I changed the standard  
21 from they did have a net operating loss to there was  
22 insufficient evidence of a net operating loss. Do you  
23 recall any of that?

24 A. Yes, sir.

25 Q. All right. I don't suppose you have a copy of

1 what was introduced as OPC Exhibit 200, the tax returns  
2 for American-Water for 2018. If not, I can forward that  
3 to you right now.

4 A. I can find it.

5 Q. I'm going to go ahead and forward it to you  
6 right now and hopefully you'll receive it.

7 MR. CLIZER: Judge, while we're waiting on  
8 that, I believe that my next round of questioning is  
9 going to require us to go in camera because this  
10 document is confidential. So I guess I'll get that  
11 started now. I apologize.

12 JUDGE HATCHER: No, that's all right. Thank  
13 you for the heads up. I will get that process started  
14 and let you know when we are in camera.

15 THE WITNESS: I have the tax return.

16 MR. CLIZER: You have the item in front of  
17 you?

18 THE WITNESS: I have the item in front of me.

19 MR. CLIZER: All right. We're going to wait  
20 until we go in camera.

21 JUDGE HATCHER: It will take just a minute  
22 because of the delay in the live stream. Okay. The  
23 live stream is now muted. Waiting for confirmation from  
24 our IT department and then we will be good to go. Hold  
25 on just one moment. Okay. We are switched over to in



1 camera. Please go ahead.

2 (REPORTER'S NOTE: The following part of the  
3 proceeding is in camera.)

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1 (In camera session)

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25 (REPORTER'S NOTE: At this point, public

1 session resumed.)

2 JUDGE HATCHER: Okay. Let's go ahead and come  
3 out of being in camera. We are still on the record.  
4 Mr. Clizer, do you have any further redirect of  
5 Mr. Riley?

6 MR. CLIZER: Unfortunately I do, Your Honor.

7 JUDGE HATCHER: All right. Please go ahead.

8 BY MR. CLIZER:

9 Q. Mr. Riley, you were asked a question by the  
10 Commission regarding the ounce of prevention issue, how  
11 that affected this case. You had mentioned in response  
12 that there were dramatic ramifications that could arise  
13 if the Commission made a decision regarding the NOL in  
14 the way that MAWC wanted to. Could you please elaborate  
15 on that?

16 A. Well, if you're claiming, and other Staff's  
17 testimony in the other ISRS all claimed the same thing,  
18 if you take this argument of an NOL and actually apply  
19 that, say okay you have an NOL, any company can come in  
20 for a rate case and they can claim this massive NOL for  
21 all these things that aren't in rates yet.

22 THE COURT REPORTER: I'm sorry.

23 JUDGE HATCHER: Mr. Riley, Bev has got a  
24 question.

25 THE COURT REPORTER: Could he start his answer

1 again.

2 THE WITNESS: Sure.

3 JUDGE HATCHER: And try and get as close to  
4 the mike as you can, Mr. Riley. We appreciate it.

5 THE WITNESS: What would happen if this  
6 argument is believed and that there's actually an NOL  
7 prior to ratemaking, that you're going to have a utility  
8 come in after three years and claim we have a net  
9 operating loss for all this plant that hasn't been put  
10 into rates and we're going to offset accumulated  
11 deferred income tax against this from what I believe  
12 bogus NOL. So the ratepayer is going to, of course,  
13 going to pay for this, because if you're offsetting all  
14 that accumulated deferred income tax you're raising rate  
15 base and this is rate base rate of return, you're going  
16 to see rates just skyrocket. I mean, this would be  
17 huge.

18 You know, you've got a company coming in with,  
19 you know, \$600 million worth of wind, you've got  
20 Missouri-American going to come in with even more plant  
21 that isn't ISRS qualified. They can claim a net  
22 operating loss for a lot of things. You've got all  
23 these companies can come in and say we haven't had a  
24 rate case in three years, we put all this stuff into  
25 service and we've got a net operating loss. You know,

1 that tears at the very core of rate base rate of return  
2 ratemaking. It would probably require federal, some  
3 sort of federal law changes.

4 Q. I apologize. I thought you had finished  
5 speaking. Please continue.

6 A. I don't think the IRS ever -- My argument is  
7 the IRS didn't say there actually was an NOL. But if  
8 this argument goes past the Commission, it's going to be  
9 huge for every utility that comes in.

10 Q. Are you aware of any other utility in the  
11 state of Missouri that claims a net operating loss in  
12 the same manner that MAWC does in this case?

13 A. I am not aware of anyone.

14 Q. Are you aware of any utility outside of the  
15 state that claims it in the same manner that MAWC does  
16 in this case?

17 A. I have not heard of one.

18 Q. You were asked questions regarding the  
19 determination the IRS made with regard to this Private  
20 Letter Ruling and I believe you sort of already touched  
21 upon this, but was the IRS ever asked if a net operating  
22 loss could occur on an interim basis?

23 A. I never read where they were asked to  
24 acknowledge a net operating loss.

25 Q. Well, that was actually going to be my second

1 question. We'll move on. That's fine. Mr. Riley, is  
2 it your belief that it is possible to assign a portion  
3 of the revenue collected through base rates to an ISRS  
4 caseor rather to ISRS plant? Let me put it that way.

5 A. Yes, I do. The ISRS --

6 Q. Could you please explain why.

7 A. Well, the ISRS plant has actually replaced  
8 plant that is in service. So as soon as that pipe --

9 THE COURT REPORTER: I need that sentence  
10 repeated again.

11 THE WITNESS: The pipe in question is now  
12 replacing pipe that is in rates. It is now part of the  
13 system, and we're not talking about ratemaking now,  
14 we're talking about actually functioning within the  
15 system. It is a part of the current rates and  
16 responsible for revenues.

17 MR. CLIZER: Give me one more second. I'm  
18 sorry. I need to pull up the Stipulation of Facts.

19 BY MR. CLIZER:

20 Q. In that same regard as far as revenues go for  
21 the ISRS plant, the term net operating loss according to  
22 the Stipulation of Facts is defined as the excess of  
23 operating expenses over revenues. Is there anything  
24 that indicates that the revenues have to be exclusively  
25 based off of the rates charged for ISRS plant in the

1 IRS, to your knowledge? Go ahead.

2 A. I would have to say no, because the net  
3 operating loss is outside of the ISRS case. When you  
4 consider the timing of an ISRS case, which is revenue  
5 requirement and the net operating loss is revenue  
6 recognition, it's outside of the case. I've kind of  
7 lost track of your question now. Could you repeat the  
8 question?

9 Q. Well, with regard to the revenue that's  
10 assignable to ISRS plant, is there anything in the  
11 definition of net operating loss that indicates that  
12 revenue has to come from rates charged for that plant?

13 A. The short answer would be no, it wouldn't.  
14 You would be charging -- You would be charging revenues  
15 prior to the ISRS ratemaking.

16 Q. And the net operating loss is not asset  
17 specific, correct?

18 A. That is my contention, yes.

19 Q. All right. Let's move on. All right. Very  
20 near the beginning Missouri-American Water asked you  
21 some questions regarding, I'm going to pronounce it  
22 CIAC. I know others have chosen a different way. And  
23 the schedules that you included in your amendments. Do  
24 you recall this? Let me start there.

25 A. Yes.

1 Q. Specifically there was a discussion of the  
2 four attachments or three, however many attachments you  
3 want to talk about in line 30 where the Company was  
4 identifying CIAC. Do you recall that?

5 A. Yes, sir.

6 Q. Okay. So here's the question. Did the fact  
7 that the Company identified CIAC in lines 30 of the ISRS  
8 mean that CIAC was included in calculation for net  
9 operating loss that's being used to calculate the  
10 adjustment for this case?

11 A. No. CIAC in this case, what is as counsel  
12 there pointed me to, is a whole -- we're actually  
13 talking apples and oranges. The CIAC in the case is  
14 something that gets deducted from rate base and gets  
15 included in tax timing differences. However, the NOL is  
16 not an ISRS component. They say no revenues are ISRS  
17 ratemaking revenues. So if you're going to go apples  
18 and apples, you have to talk about CIAC outside of those  
19 schedules. You have to talk about CIAC as a taxable  
20 income, because that's the way it is now in the income  
21 taxes just like a net operating loss is an income tax  
22 component that whether you talk about CIAC in a rate  
23 case is completely different than claiming CIAC as a  
24 taxable revenue in offsetting your accelerated  
25 depreciation prior to the ISRS ratemaking.



1 Q. Can you describe, hopefully in brief, how  
2 exactly the \$35,000 approximate adjustment is  
3 calculated?

4 A. Well, it's my understanding, and I don't have  
5 the tax handy, but they calculated the revenue  
6 requirement that should have been included, and feel  
7 free to correct me there, that should have been included  
8 in the last three ISRS cases and then figured out the  
9 amount that should have been in there and then applied  
10 interest to it and that is how they came up with the  
11 amount for each case that totaled thirty-five thousand  
12 three hundred some odd dollars.

13 Q. And to be clear, when the Company calculated  
14 the revenue requirement that it needed for each of those  
15 three cases, they did not include the CIAC as part of  
16 that offset to NOL as you say needs to be done?

17 A. No, no, they did not.

18 MR. CLIZER: All right. Thank you. I have no  
19 further redirect.

20 JUDGE HATCHER: Thank you, Mr. Clizer. The  
21 next witness that I have on our list is Mark  
22 Oligschlaeger. Mr. Oligschlaeger, if you would please  
23 unmute, I will swear you in.

24 (Witness sworn.)

25 JUDGE HATCHER: Thank you and go ahead,

1 Mr. Johnson.

2 MR. JOHNSON: Judge, as a preliminary matter,  
3 I believe we will mark the direct testimony of  
4 Mr. Oligschlaeger as Exhibit No. 300 and the rebuttal  
5 testimony of Mr. Oligschlaeger as Exhibit 301 public and  
6 confidential.

7 JUDGE HATCHER: All right. So marked.

8 MARK L. OLIGSCHLAEGER,  
9 called as a witness, being sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. JOHNSON:

11 Q. Will you please state your name and spell your  
12 last name for the record?

13 A. Yes. My name is Mark L. Oligschlaeger. My  
14 last name is spelled O-l-i-g-s-c-h-l-a-e-g-e-r.

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

16 A. I am employed by the Missouri Public Service  
17 Commission. I am the Director of the Financial and  
18 Business Analysis Division.

19 Q. Are you the same Mark Oligschlaeger who  
20 prepared or caused to be prepared direct testimony in  
21 this matter marked as Staff Exhibit 300 and rebuttal  
22 testimony in this matter marked as Staff Exhibit 301  
23 public and confidential?

24 A. I am.

25 Q. Do you have any changes or corrections to your

1 testimony?

2 A. I do not.

3 Q. Is your testimony true and correct to the best  
4 of your knowledge and belief?

5 A. It is.

6 Q. If I were to ask you those same questions  
7 today, would your answers be substantially the same?

8 A. They would.

9 MR. JOHNSON: Judge, at this time I would  
10 offer Exhibits 300 and 301 public and confidential into  
11 evidence.

12 JUDGE HATCHER: All right. We will start with  
13 Missouri-American. Mr. Cooper, do you have any  
14 objections to the admittance of those exhibits?

15 MR. COOPER: I do not.

16 JUDGE HATCHER: Thank you. And Mr. Clizer, do  
17 you have any objections to the admittance of those  
18 exhibits? Mr. Clizer, sorry about that. I muted you on  
19 my end. Mr. Clizer, do you have any objections?

20 MR. CLIZER: I had muted my phone in addition  
21 to muting the call and therefore I apologize. I do not.  
22 I answered twice.

23 JUDGE HATCHER: Thank you. Without objection,  
24 the exhibits are so admitted.

25 (STAFF'S EXHIBITS 300 AND 301C AND 301P WERE

1 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

2 JUDGE HATCHER: Please go ahead.

3 MR. JOHNSON: I tender the witness for  
4 cross-examination.

5 JUDGE HATCHER: Thank you. And Mr. Cooper?

6 MR. COOPER: No questions, Your Honor.

7 JUDGE HATCHER: Thank you. And Mr. Clizer?

8 MR. CLIZER: Good afternoon, Mr.  
9 Oligschlaeger.

10 THE WITNESS: Good afternoon.

11 CROSS-EXAMINATION BY MR. CLIZER:

12 Q. The good news is that fortunately most of the  
13 cross I had prepared has been rendered irrelevant so  
14 this should hopefully be relatively short. That being  
15 said, I am going to email an exhibit to counsel right  
16 now who I will then hope to forward on to you. So I'll  
17 ask you bear with me for one second. I apologize. All  
18 right. I have now forwarded an exhibit to counsel who  
19 will forward it on to you shortly.

20 MR. CLIZER: Judge, while that process is  
21 going on, it's not my intention to have this exhibit  
22 marked or offered. I just want to review it with the  
23 witness. So I'm laying that out there for what it is.

24 JUDGE HATCHER: Thank you, Mr. Clizer. I  
25 appreciate the update.

1 BY MR. CLIZER:

2 Q. Mr. Oligschlaeger, can you please tell me once  
3 you've received a copy from your counsel?

4 A. I will.

5 JUDGE HATCHER: Mr. Clizer, if you have any  
6 other exhibits that have not previously been  
7 distributed, could you go ahead and do that now? Thank  
8 you.

9 MR. CLIZER: I would hope this is actually my  
10 last one.

11 JUDGE HATCHER: Thank you.

12 MR. JOHNSON: I have forwarded on the exhibit  
13 to Mr. Oligschlaeger.

14 JUDGE HATCHER: I have forwarded it on my end.

15 THE WITNESS: I'm at the exhibit and I have  
16 opened it up.

17 MR. CLIZER: All right. For the sake of the  
18 record, I'd like this to reflect that this is what the  
19 OPC is purporting to be a copy of Karen Lyons' rebuttal  
20 testimony filed in Docket No. WO-2019-0184. Again, I  
21 won't be asking Mr. Oligschlaeger to verify that.  
22 Normally I'd be offering it. I'm instead simply wishing  
23 to know whether or not he agrees with certain statement  
24 that Ms. Lyons said from his own personal opinion.  
25 Again, I'd like the record to reflect what I'm referring

1 to.

2 BY MR. CLIZER:

3 Q. So Mr. Oligschlaeger, if you could turn to  
4 page 3 of that document.

5 A. I am there.

6 Q. If you could read aloud for me just lines 3  
7 through 6?

8 A. All right.

9 Question. Is it possible to determine what  
10 specific ratemaking elements give rise to an NOL?

11 Answer. No. NOLs are calculated on an  
12 overall basis and are not split out for accounting  
13 purposes by the various tax deductions that may  
14 contribute to an NOL situation.

15 Q. Now, Mr. Oligschlaeger, I simply ask, do you  
16 agree with the statement that Ms. Lyons provided in  
17 response to that question?

18 A. I do.

19 Q. Thank you. And then can we do the same thing  
20 for lines 16 at page -- hang on one second. Make sure I  
21 get this right.

22 Actually you know what? I won't ask any  
23 further questions. And I have no further cross. Thank  
24 you.

25 JUDGE HATCHER: Thank you, Mr. Clizer. The

1 bench does have a couple questions.

2 QUESTIONS BY JUDGE HATCHER:

3 Q. Mr. Oligschlaeger, I'd like to follow up on  
4 your answer, that very last answer to Mr. Clizer's  
5 question. What is the difference between your view then  
6 and Public Counsel's view given that you agree with that  
7 statement that NOLs are calculated on an overall basis  
8 and not split out for accounting purposes?

9 A. Well, I think where that inquiry was going  
10 involves the question of assuming you have an NOL  
11 situation for a company or a utility how do you split  
12 that out between different rate elements. And I think  
13 what Staff has indicated in the past, and we would still  
14 agree with, is you really can't not by any -- there's no  
15 one correct way to do that if you have to do it. And to  
16 us, to Staff in past cases the whole question was moot  
17 because we believed there was no NOL generated during  
18 the ISRS period. So the question really didn't get  
19 dealt with.

20 But Missouri-American thought otherwise and  
21 argued or asked the IRS to rule that the so-called with  
22 and without method should be used to determine the  
23 amount of NOL that should be assumed hypothetically be  
24 imputed into the ISRS rate process. So it's a  
25 convoluted way of probably answering your question. I

1 don't know that we disagree with OPC on the basic  
2 technical point. It's just that the IRS ultimately  
3 determined to agree with the Company and disregard the  
4 Staff's and OPC's arguments in the case.

5 Q. Thank you. I'd like to talk about my ounce of  
6 prevention quote that I asked Mr. Riley about. I felt  
7 that your testimony also leaned in that direction. Can  
8 you expand on that, because I'm worried now that from  
9 what Mr. Riley said is that this one small change could  
10 mushroom into a much larger issue for the Commission  
11 down the road.

12 A. Let me answer that in a couple of pieces.  
13 First of all, is this going to be a precedent for other  
14 utilities. It is stated within the PLR, it is stated  
15 within all PLRs that they are not taken as precedent for  
16 anyone else other than the taxpayer and the specific  
17 circumstances that they discuss in a PLR request. Staff  
18 interprets that as meaning that the PLR to the extent  
19 the Commission needs to take that into account only  
20 applies to Missouri-American, only applies to  
21 Missouri-American as long as it has an NOL on its books,  
22 and only applies to ISRS rate proceedings, not to  
23 general rate cases.

24 So for that reason -- So no other utilities,  
25 or at least Staff views it as this really doesn't



1 establish precedent for any other utility or for any  
2 other venue other than ISRS cases. So I think the  
3 impact is quite limited and just because another company  
4 in another type of case may raise the same arguments, I  
5 don't think they can use the PLR as direct support for  
6 that and we would look at it in the same way as we did  
7 in the past for Missouri-American.

8           Maybe to talk about the ounce of prevention  
9 concept a little bit. I agree that in this particular  
10 case in these particular circumstances the Commission  
11 should take an attitude of an ounce of prevention  
12 preventing something worse happening overall. By  
13 something worse, I mean the potential loss of the  
14 accelerated depreciation deduction.

15           The reality is that what the IRS said in this  
16 PLR only applies or only must be taken into account for  
17 much less than 1 percent of the dollar values that were  
18 actually at issue in the case. I think in each case  
19 there was somewhere between 800, 900,000, maybe up to a  
20 million dollars at issue. When all is said and done,  
21 because of how the IRS ruled on the PLR, only somewhere  
22 between 5 to \$10,000 per case ultimately was at issue  
23 and needs to be charged to the customers.

24           Given, you know, given the hypothetical choice  
25 of do we fight what the IRS is doing somehow or do we

1 accept it, given the very small volume of dollars, I  
2 don't think that would be a hill I would recommend that  
3 we climb.

4 Q. Thank you. And to follow up on that concern,  
5 can you give me some examples of tools that the  
6 Commission has available should the IRS reverse itself,  
7 should OPC call the IRS and say hey, you just assumed  
8 this fact and the IRS says oh, my gosh, you're right, do  
9 we have prudence reviews, true-ups? How would that work  
10 if we needed to walk this back if the ounce of  
11 prevention was unnecessary?

12 A. Well, and I don't have any kind of detailed  
13 knowledge of what recourse the Commission might have if  
14 it ultimately chooses not to accept the IRS's finding in  
15 this particular case. I assume there may be some way to  
16 appeal in court. I assume there may be some ways to  
17 appeal directly to the IRS. It could be that the  
18 Company would be able to submit a new PLR request based  
19 on whatever information was included in its order.  
20 Beyond that, I don't think I can be any more specific  
21 than that. I'll leave it at that.

22 Q. My question was a little bit different. Let's  
23 assume that the Commission says we're going with this  
24 ounce of prevention strategy and by the time of the next  
25 general rate case. Would the Commission then have an

1 opportunity to look back on this 35,000 and say that  
2 actually wasn't the correct finding, the IRS has issued  
3 a new statement or whatever hypothetical you'd want to  
4 fit in, is there a way to walk back this 35,000  
5 adjustment at the next general rate case or sometime in  
6 the future?

7 A. Well, I think the Commission retains its  
8 prerogatives to set rates, including ISRS rates, and as  
9 I noted in my testimony certainly the IRS does not  
10 directly set ISRS rates or any other kind of utility  
11 rates in its pronouncements in its PLRs. So I think  
12 technically yes, the Commission would have the ability  
13 to change its mind. Parties would have the ability to  
14 ask it to change its mind. Based on the evidence, they  
15 could find -- they could reverse themselves. At this  
16 juncture I don't think that would be a wise course of  
17 action, particularly if the dollars involved remain as  
18 small as what they have been now and in the past cases.

19 Q. Okay. And one last question. In reference to  
20 your rebuttal testimony beginning on page 8, could you  
21 explain your concern with Mr. Wilde's direct testimony  
22 from his pages 11 through 12 without getting into  
23 confidential information?

24 A. Well, I can certainly try. I interpreted  
25 Mr. Wilde's rebuttal testimony, as well as other

1 comments he has made off the record, both going back to  
2 past cases as well as this case as Missouri-American  
3 believes there may be a problem in the normalization  
4 sense for the Commission to deduct deferred taxes in  
5 ISRS cases from rate base when the underlying revenues  
6 from the ISRS had not yet been charged to customers. My  
7 concern is that's what we do as an absolute standard  
8 course of action not only in ISRS cases for close to 20  
9 years now but in general rate cases.

10 What the Commission does is they establish a  
11 rate base cutoff point, they reflect plant balances out  
12 to that point at the same time, they match that with the  
13 same values at the same time for accumulated  
14 depreciation and they do the exact same thing for  
15 accumulated deferred income taxes and they derive those  
16 values from the Company's books. The Company does not  
17 wait to receive revenues before they book the associated  
18 deferred taxes, accumulated depreciation, for that  
19 matter plant dollars. And to now suggest that what the  
20 Commission has been doing specifically in ISRS cases for  
21 close to 20 years somehow now falls afoul of the  
22 normalization provisions which have also been in place  
23 for decades to me that's simply not credible.

24 JUDGE HATCHER: Thank you. Are there any  
25 other questions from Commissioners? Any Commissioner

1 questions? Hearing none, let's move to  
2 recross-examination. Mr. Cooper, you're first up.

3 MR. COOPER: Thank you, Your Honor.

4 RECROSS-EXAMINATION BY MR. COOPER:

5 Q. Mr. Oligschlaeger, just very briefly. In your  
6 last answer I think you were describing your  
7 disagreement with Mr. Wilde's testimony as to ruling 8;  
8 is that correct?

9 A. Yes.

10 Q. I believe you were at the hearing earlier  
11 today, and would you agree with Mr. Wilde in that the  
12 adjustment that's been proposed here is appropriate  
13 under ruling 9?

14 A. Well, I didn't necessarily fully follow that.  
15 My understanding is the request for ruling 8 is  
16 fundamentally different than the request for ruling 9  
17 and 10, because ruling 9 and 10 assumes the existence of  
18 an NOL whether actual or hypothetical. As I understand  
19 it from Mr. Wilde's testimony, ruling number 8 is not  
20 dependent upon an NOL at all. It might apply in  
21 situations where a utility is not in effect in an NOL  
22 situation. So I'm not sure how to reconcile what  
23 Mr. Wilde said earlier to how I interpret at least his  
24 testimony. Perhaps that bears further discussion. To  
25 the extent I'm not understanding ruling 8 fully, I would

1 be happy to be further educated.

2 Q. Let me back up because really my question is  
3 more sort of high level than where you were headed with  
4 that, which is you've recommended that the \$35,328  
5 adjustment be made in this case, correct?

6 A. Yes.

7 Q. And you're satisfied that ruling 9 supports  
8 that adjustment, correct?

9 A. That position is based upon our interpretation  
10 of ruling 9, yes.

11 Q. And if the adjustment is made in this case and  
12 it's made based upon your understanding of ruling 9,  
13 ruling 8 sort of falls away. There's no need to address  
14 that here in this case, is there?

15 A. I think I would agree with that analysis.

16 MR. COOPER: That's all the questions I have,  
17 Your Honor.

18 JUDGE HATCHER: Thank you, Mr. Cooper. Mr.  
19 Clizer?

20 RE-CROSS-EXAMINATION BY MR. CLIZER:

21 Q. Good afternoon again. In response to the  
22 Commission's question regarding the ounce of prevention,  
23 you basically stated something to the effect that this  
24 only applies to Missouri-American Water, it only applies  
25 if it had an NOL on its books and it only applies to

1 ISRS rates or cases; is that fundamentally correct?

2 A. Yes.

3 Q. I want to focus on just the second one. So  
4 again, your position is this only applies, the Private  
5 Letter Ruling only applies if the Company actually has a  
6 net operating loss on its books?

7 A. Well, I think as has been discussed at great  
8 length both in testimony here today, the IRS appears to  
9 have a different working definition of NOL in the  
10 context of ISRS rate cases than Staff or OPC in the  
11 past; but with that caveat, I think I agree with your  
12 statement.

13 Q. Your explanation that the IRS has a different  
14 working understanding, that's based on the language in  
15 the facts section where the IRS determined -- well,  
16 where the IRS included as a fact that there was an NOL  
17 or a taxable loss as they referred to it; is that  
18 correct?

19 THE COURT REPORTER: I'm sorry. Mr. Clizer,  
20 could you repeat that question again?

21 MR. CLIZER: I will do my best. That was a  
22 little convoluted.

23 BY MR. CLIZER:

24 Q. All right. Your determination that the IRS  
25 has a different understanding of the NOL as it relates

1 to ISRS cases was based on the fact that was included in  
2 the Private Letter Ruling that said MAWC had an NOL. Is  
3 that basically correct?

4 A. Oh, yeah. I think I stepped throughout --  
5 reanalyzed it in my direct testimony and rebuttal  
6 testimony. Basically we relied upon certain statements  
7 made by the IRS in what I think was labeled the facts  
8 section and how those interrelated ultimately with how  
9 the IRS ruled on ruling request number 9.

10 Q. Would you happen to have a copy of the Private  
11 Letter Ruling in front of you?

12 A. I can get it. I have it.

13 Q. Can you go right to the bottom right above the  
14 -- sorry. I'm on page 22 of 23.

15 A. Okay.

16 Q. That's the version that was attached to  
17 Mr. Wilde's testimony. The first paragraph starts with  
18 12, the next with accepts, the next with this, and the  
19 next one with this ruling is based upon information.

20 A. Yes, I'm there.

21 Q. Do you follow?

22 A. Yes.

23 Q. You would agree with me that that penultimate  
24 paragraph reads this ruling is based upon information  
25 and representations submitted by taxpayer and



1 accompanied by penalty of perjury statements executed by  
2 an appropriate party. While this has not verified any  
3 of the material submitted in support of the request for  
4 ruling, it is subject to verification upon examination.  
5 Do you agree with that?

6 A. I do agree with you that that is what this  
7 states.

8 Q. If the IRS were to later make a determination  
9 that there was a misstatement of fact about the  
10 existence of an NOL and withdrew its PLR, would that  
11 change Staff's position?

12 A. Our entire position on this case is based upon  
13 the PLR. If the Company were under some certain  
14 circumstances to withdraw that or revoke it, yes, that  
15 would change our position.

16 MR. CLIZER: I don't think I have any further  
17 -- no, I have one last question.

18 BY MR. CLIZER:

19 Q. This one is almost out of curiosity. Is it  
20 your position that a company can both have a net  
21 operating loss and not have a net operating loss  
22 simultaneously?

23 A. I think the best way to answer that is no. I  
24 think what obviously gives rise to the question is again  
25 the IRS and Missouri-American providing a different

1 understanding and definition of NOL than what Staff  
2 understood and understands that definition to be. So I  
3 suppose an NOL may be considered not to exist saying  
4 Staff or OPC's understanding, but it might exist in  
5 alternatively Missouri-American's or the IRS's  
6 understanding.

7 Q. Again, the IRS understanding in this case is  
8 what was printed in the facts section of this Private  
9 Letter Ruling; that's where Staff is coming from?

10 A. Yes.

11 MR. CLIZER: Now I have no further questions.  
12 Thank you.

13 JUDGE HATCHER: Thank you. And back to  
14 Mr. Johnson for redirect.

15 MR. JOHNSON: Thank you, Judge.

16 REDIRECT EXAMINATION BY MR. JOHNSON:

17 Q. Mr. Oligschlaeger, back at the beginning of  
18 your questioning Mr. Clizer for OPC had you reference  
19 the testimony of Karen Lyons from a prior ISRS  
20 proceeding. Do you remember that?

21 A. I do.

22 Q. And essentially that testimony stated that  
23 NOLs are calculated on an overall basis and you agreed  
24 with that statement, correct?

25 A. Yes.

1 Q. Is that fact the basis of Staff's  
2 recommendation in this case?

3 A. No. I mean, and maybe to give that a little  
4 more explanation, no. In prior ISRS cases the Company  
5 argued hey, an NOL exists and this is how you should  
6 account for it in the context of the ISRS rate case. We  
7 disagreed in prior cases with these proposed with or  
8 without method. We believed it was not an appropriate  
9 way of assigning an NOL to ISRS cases in the event that  
10 such an assignment was necessary and suggested  
11 alternative ways of doing it.

12 So regardless of whether their NOLs are  
13 calculated on an overall basis or not, there may be some  
14 circumstances in which there's a legitimate NOL existing  
15 which would need to be allocated in some way to ISRS  
16 plant as opposed to non-ISRS eligible plant or other tax  
17 deductions that may give rise to the NOL.

18 Q. Right. Also, the Judge directed a couple  
19 questions to you regarding the ounce of prevention, and  
20 in your response you mentioned your belief that the PLR  
21 would only apply to Missouri-American and only if they  
22 had an NOL on their books. Do you remember that?

23 A. Yes. In addition, being in the context of  
24 ISRS cases, yes.

25 Q. When you used the term NOL on their books, are

1 you referencing the generation of a new NOL amount in  
2 the given tax year or something else?

3 A. Well, that's how we would interpret the  
4 criteria for including an NOL in an ISRS case or in any  
5 rate case that some NOL will be generated within the  
6 period in question. Again, the IRS I think takes -- has  
7 effectively taken a broader view that anytime a company  
8 has a pre-existing NOL on its books, even if it's being  
9 used and no additional amounts are being generated would  
10 trigger ruling number 9.

11 Q. Finally, Mr. Clizer asked you about the facts  
12 contained in the PLR. Did Staff provide comments which  
13 were attached to the Company's PLR request?

14 A. We did. And the approach we took was the  
15 Company made 12 different requests for rulings. I think  
16 some of them weren't necessarily directly germane or  
17 related to the issues in prior ISRS rate cases. Five of  
18 them appeared to be we provided comments on those five,  
19 including certainly the basis for the Staff's and  
20 ultimately the Commission's positions and decisions in  
21 those cases, and I believe it was clearly expressed that  
22 the Staff took the position and the Commission has  
23 adopted it that no -- since no NOL was generated during  
24 the applicable ISRS proceedings none should be  
25 recognized for ISRS rate purposes.

1           So what the IRS did with those  
2 representations, whether they took them into account,  
3 gave them any consideration, the document was silent.

4           Q. Do you have any reason to believe the IRS did  
5 not take those into consideration?

6           A. My concern would be -- Well, first of all,  
7 they don't even mention the Staff's comments in the PLR  
8 so certainly they don't indicate they took it into  
9 consideration. Plus, the PLR, maybe this is standard  
10 for all PLRs, is totally -- almost totally silent as to  
11 why the IRS has drawn the conclusions that it did.

12           I think OPC is correct in a limited sense that  
13 they appeared to take certain factual assertions made by  
14 Missouri-American and accept them as opposed to other  
15 assertions that might have been found in the Staff  
16 comments. Again, they didn't talk about that. So I  
17 don't know what they took into account.

18           MR. JOHNSON: Thank you. I have no further  
19 questions.

20           JUDGE HATCHER: Thank you, Mr. Johnson. That  
21 will take us to the first of our last two witnesses.  
22 Ali Arabian. Mr. Arabian, if you would unmute your  
23 phone or computer, I will swear you in.

24           (Witness sworn.)

25           JUDGE HATCHER: Thank you. And direct

1 examination, Mr. Johnson?

2 MR. JOHNSON: Thank you. I believe we will  
3 mark Mr. Arabian's direct testimony as Staff Exhibit 302  
4 and the supplement to direct testimony of Mr. Arabian as  
5 Exhibit 303.

6 JUDGE HATCHER: They will be so marked.

7 ALI ARABIAN,  
8 called as a witness, being sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. JOHNSON:

10 Q. Mr. Arabian, will you please state your name  
11 and spell your last name for the record?

12 A. My name is Ali Arabian spelled A-r-a-b-i-a-n.

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

14 A. I'm employed by the Missouri Public Service  
15 Commission as a Utility Regulatory Auditor II.

16 Q. Are you the same Ali Arabian who prepared or  
17 caused to be prepared direct testimony in this matter  
18 marked as Staff Exhibit 302 and supplement to direct  
19 testimony marked as Staff Exhibit 303?

20 A. Yes.

21 Q. Do you have any changes or corrections to your  
22 testimony?

23 A. No, I don't.

24 Q. Is your testimony true and correct to the best  
25 of your knowledge and belief?

1 A. Yes.

2 Q. If I were to ask you those same questions  
3 today, would your answers be substantially the same?

4 A. Yes.

5 MR. JOHNSON: Judge, at this time I would  
6 offer Staff Exhibits 302 and 303 as evidence.

7 JUDGE HATCHER: Thank you. Are there any  
8 objections to the admittance of those two exhibits? Mr.  
9 Cooper?

10 MR. COOPER: No, Your Honor.

11 JUDGE HATCHER: Any objections, Mr. Clizer?

12 MR. CLIZER: No, Your Honor. Thank you.

13 JUDGE HATCHER: Thank you. They are so  
14 admitted.

15 (STAFF EXHIBITS 302 AND 303 WERE RECEIVED INTO  
16 EVIDENCE AND MADE A PART OF THIS RECORD.)

17 JUDGE HATCHER: Mr. Johnson?

18 MR. JOHNSON: Thank you, Judge. At this time  
19 I would tender Mr. Arabian for cross-examination.

20 JUDGE HATCHER: Thank you. And Mr. Cooper?

21 MR. COOPER: No questions.

22 JUDGE HATCHER: Thank you. And Mr. Clizer?

23 MR. CLIZER: No questions. Thank you.

24 JUDGE HATCHER: Thank you. And are there any  
25 Commissioner questions?

1           Okay. That brings us to our last witness for  
2 this evidentiary hearing. Witness Matthew Barnes, if  
3 you would please unmute your phone and I will swear you  
4 in.

5           (Witness sworn.)

6           JUDGE HATCHER: Thank you. And Mr. Johnson?

7           MR. JOHNSON: Thank you. Staff will mark  
8 Mr. Barnes' direct testimony as Staff Exhibit 304.

9           JUDGE HATCHER: Go ahead.

10                           ALI ARABIAN,

11 called as a witness, being sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. JOHNSON:

13           Q. Will you please state your name and spell your  
14 last name for the record?

15           A. My name is Matthew J. Barnes, B-a-r-n-e-s.

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

17           A. I'm employed by the Missouri Public Service  
18 Commission in the Water and Sewer Department as a  
19 Utility Regulatory Auditor IV.

20           Q. Are you the same Matthew Barnes who prepared  
21 or caused to be prepared direct testimony in this matter  
22 marked as Staff Exhibit 304?

23           A. Yes, I am.

24           Q. Do you have any corrections or changes to your  
25 testimony?



1           A.    I do.  Just a couple.  On page 3, line 6, the  
2 word Table 1 in that second sentence should be stricken  
3 out and the sentence should read please see D Table  
4 below for a side-by-side comparison, and the next  
5 sentence that starts with Table 1, Table 1 needs to be  
6 stricken and replaced with the word this, t-h-i-s, and  
7 that's all I have.

8           Q.    With those changes, is your testimony true and  
9 correct to the best of your knowledge and belief?

10          A.    It is.

11          Q.    If I were to ask you those same questions  
12 today, would your answers be substantially the same?

13          A.    Yes, they would.

14               MR. JOHNSON:  Judge, at this time I would  
15 offer Staff Exhibit 304 as evidence.

16               JUDGE HATCHER:  Thank you.  Are there any  
17 objections to Exhibit 304 being offered onto the hearing  
18 record?  Mr. Cooper?

19               MR. COOPER:  No objection.

20               JUDGE HATCHER:  And Mr. Clizer?

21               MR. CLIZER:  No objection.

22               JUDGE HATCHER:  Thank you.  Without objection,  
23 Exhibit 304 is admitted onto the hearing record.

24                       (STAFF'S EXHIBIT 304 WAS RECEIVED INTO  
25 EVIDENCE AND MADE A PART OF THIS RECORD.)

1 JUDGE HATCHER: Mr. Johnson?

2 MR. JOHNSON: I tender the witness for  
3 cross-examination.

4 JUDGE HATCHER: Thank you. And Mr. Cooper?

5 MR. COOPER: No questions.

6 JUDGE HATCHER: Thank you. And Mr. Clizer?

7 MR. CLIZER: No questions. Thank you, Your  
8 Honor.

9 JUDGE HATCHER: Thank you. And are there any  
10 Commissioner questions?

11 Okay. Hearing none, we are in the last couple  
12 minutes of the hearing. So let's go over some last  
13 minute announcements. I want to remind everyone  
14 exhibits must be submitted to the email address  
15 exhibits@psc.mo.gov. Let's set a deadline of Friday for  
16 that submission.

17 MR. CLIZER: Your Honor --

18 JUDGE HATCHER: Yes.

19 MR. CLIZER: -- when we email those in, would  
20 you prefer that they be titled as Exhibit 200, 201, et  
21 cetera, or do you want them to be titled what they  
22 should be in terms of -- I just need a little bit of  
23 clarification how to send the files in. Does that make  
24 sense? How would you like them titled basically?

25 JUDGE HATCHER: As has been explained to me,

1 the data center will make sure that all exhibits are  
2 correctly marked. So if you have the ability,  
3 wherewithal and the time to mark your exhibits with the  
4 exhibit number, that would be great. And if you don't,  
5 my understanding is that the data center will take care  
6 of that for the parties. Does that answer your  
7 question, Mr. Clizer?

8 MR. CLIZER: Yes, it does. Sorry to bother  
9 you.

10 JUDGE HATCHER: No, no, no, you're fine.

11 COMMISSIONER RUPP: Hey, Judge, it's  
12 Commissioner Rupp real quick.

13 JUDGE HATCHER: Yes.

14 COMMISSIONER RUPP: Hey, my battery is at 3  
15 percent and I know you're in your announcements. I just  
16 wanted to say great job today. Thank you everybody for  
17 the difficult situation even with the technical  
18 difficulties. Just great job for handling it and  
19 getting this done.

20 JUDGE HATCHER: Thank you, Commissioner. I  
21 appreciate the kind words.

22 Last couple announcements. Bev, we have  
23 requested an expedited turnaround so that we can get a  
24 transcript by tomorrow.

25 THE COURT REPORTER: Tomorrow?

1 JUDGE HATCHER: Evening.

2 THE COURT REPORTER: Evening?

3 JUDGE HATCHER: Yes. We have briefs due in  
4 this case Friday.

5 THE COURT REPORTER: Just hold on a second.

6 JUDGE HATCHER: Okay.

7 THE COURT REPORTER: Is there any way it could  
8 be Friday morning?

9 JUDGE HATCHER: Let me ask the parties. We  
10 have --

11 MR. CLIZER: Would it be possible --

12 JUDGE HATCHER: Go ahead, Mr. Clizer.

13 MR. CLIZER: I know that traditionally  
14 briefing has been due on a weekday basis. Would it be  
15 possible to move briefing to be due on a weekend?

16 JUDGE HATCHER: I'm hesitant to do that. I  
17 was volunteering myself to work on the weekend. The  
18 Commission will likely have two agenda meetings related  
19 to this case, the first as a discussion coming up next  
20 Wednesday and the second with the Commission deciding  
21 its order in this case. Let me look. That would be  
22 June 17 and that is to meet the -- remind me when the  
23 operation of law date is. I think it was the 30th.

24 So that's why we have the compressed schedule  
25 on the briefings. I'm fine with extending that, but my

1 deadline is noon on Monday. I'm willing to try and  
2 extend that out. Bev has asked for Friday morning.  
3 I'll go down the counsel list, and Mr. Clizer has asked  
4 for sometime Saturday or Sunday. I'll cover that in a  
5 second.

6 Mr. Cooper, what are your thoughts?

7 MR. COOPER: Well, I don't have my calendar in  
8 front of me, Judge. Do you have in front of you when  
9 the reply -- because we were going to do reply briefs as  
10 well, weren't we?

11 JUDGE HATCHER: I only had scheduled one round  
12 of briefs.

13 MR. COOPER: Okay. Then I guess I'm to a  
14 certain extent in the same boat as Mr. Clizer. I could  
15 use another day or so probably.

16 JUDGE HATCHER: I'm fine with going until  
17 Sunday, Monday morning like 8:00 sharp.

18 MR. COOPER: Either works for me. Either  
19 works for me. I can make it work too.

20 MR. CLIZER: Yeah, I'd add only that any  
21 amount of additional time would be helpful.

22 JUDGE HATCHER: Okay. Mr. Johnson, let's --

23 MR. JOHNSON: While I would very much prefer  
24 not to work on the weekend, I understand the short time  
25 frame with this case may require it. I believe I can

1 accommodate any schedule the parties prefer.

2 JUDGE HATCHER: Okay. Let's amend the  
3 schedule here and now. I will not be able to get that  
4 out as a written order until, what is today, Wednesday,  
5 until Thursday. I have to go run and go pick up the  
6 kids after this. Final briefs are due Sunday. Bev,  
7 transcript is due Friday as soon as you can. And there  
8 will be no reply briefs.

9 Are there any other issues before we adjourn?  
10 Okay. We are adjourned and off the record. Thank you  
11 all for participating and thank you all for being  
12 patient.

13 MR. JOHNSON: Thank you, Judge.

14 MR. COOPER: Thank you.

15 JUDGE HATCHER: Thanks.

16 (Off the record.)  
17  
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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place to the best of my ability as the connection with a couple of the witnesses was very poor.

*Beverly Jean Bentch*

Beverly Jean Bentch, RPR, CCR No. 640

<p><b>#</b></p> <p><b>#18</b> 77:25  <b>#19</b> 78:7  <b>#20</b> 78:14</p> <hr/> <p><b>\$</b></p> <p><b>\$10,000</b> 112:22  <b>\$35,000</b> 65:19 104:2  <b>\$35,328</b> 13:16,20  18:6 22:2 25:11 117:4  <b>\$38</b> 61:18,20  <b>\$39.6</b> 61:13 66:18  <b>\$600</b> 99:19  <b>\$9,725,687</b> 25:15</p> <hr/> <p><b>1</b></p> <p><b>1</b> 112:17 128:2,5  <b>10</b> 16:19 60:12,15,19,  21 62:25 69:21,24  72:18 116:17  <b>100</b> 36:16,22 37:4  <b>101</b> 37:8,24 38:5,12,  15,22  <b>102</b> 39:17 41:8,24  42:6  <b>102C</b> 39:18 40:9  41:15,22 42:9  <b>102P</b> 39:19 40:9 41:22  42:9  <b>103</b> 41:8,24 42:7  <b>103C</b> 40:15 41:15,22  42:9  <b>103P</b> 40:15 41:22 42:9  <b>11</b> 114:22  <b>12</b> 79:25 114:22  119:18 123:15</p>	<p><b>1300</b> 46:18  <b>14</b> 19:19  <b>1400</b> 46:17  <b>16</b> 109:20  <b>17</b> 131:22  <b>18</b> 68:13  <b>19</b> 28:3 68:13</p> <hr/> <p><b>2</b></p> <p><b>2</b> 55:12  <b>20</b> 28:1 68:15,16  115:8,21  <b>200</b> 5:22 6:4 48:10,12,  16,22,25 95:1 129:20  <b>201</b> 75:19 76:8,13  129:20  <b>2017</b> 35:4 82:20 83:1  <b>2018</b> 28:2 47:18  79:17,23 80:12 95:2  <b>2018-0373</b> 27:24  <b>2019</b> 23:14  <b>202</b> 75:21 76:8  <b>2020</b> 5:3  <b>203</b> 75:22 76:8  <b>22</b> 119:14  <b>23</b> 80:21 92:22 119:14  <b>26</b> 19:11  <b>27</b> 19:19  <b>29</b> 19:11</p> <hr/> <p><b>3</b></p> <p><b>3</b> 5:3 46:20 51:5 52:24,  25 53:1 74:17 109:4,6  128:1 130:14  <b>30</b> 78:2,9,16 103:3,7  <b>300</b> 105:4,21 106:10,  25</p>	<p><b>301</b> 105:5,22 106:10  <b>301C</b> 106:25  <b>301P</b> 106:25  <b>302</b> 125:3,18 126:6,15  <b>303</b> 125:5,19 126:6,15  <b>304</b> 127:8,22 128:15,  17,23,24  <b>30th</b> 131:23  <b>31</b> 82:20 83:1  <b>35,000</b> 33:24 34:1  61:23 87:22 88:1,8,10  114:1,4  <b>360</b> 6:5  <b>393.1000(1)(a)</b> 18:21  <b>3:00</b> 71:14 72:21  <b>3:10</b> 72:21,23</p> <hr/> <p><b>4</b></p> <p><b>4</b> 77:21  <b>456</b> 5:16</p> <hr/> <p><b>5</b></p> <p><b>5</b> 112:22</p> <hr/> <p><b>6</b></p> <p><b>6</b> 78:5 109:7 128:1  <b>650</b> 5:23  <b>65101</b> 5:23  <b>65102</b> 5:16 6:5</p> <hr/> <p><b>7</b></p> <p><b>7</b> 80:20</p> <hr/> <p><b>8</b></p> <p><b>8</b> 59:13 60:12,13,14,</p>	<p>21,22 62:16,17,24  63:5 68:18,25 69:17  74:17 75:2 77:21 78:5,  12 114:20 116:7,15,  19,25 117:13</p> <p><b>800</b> 112:19  <b>8453-C</b> 48:1</p> <hr/> <p><b>9</b></p> <p><b>9</b> 19:18 60:12,15,16,21  62:25 68:21,24 69:24  75:2 92:22 116:13,16,  17 117:7,10,12 119:9  123:10  <b>9,684.158</b> 74:19  <b>9-6-8-4-1-5-8</b> 74:19  <b>900,000</b> 112:19</p> <hr/> <p><b>A</b></p> <p><b>A-R-A-B-I-A-N</b>  125:12  <b>AAO</b> 24:21  <b>ability</b> 17:5 24:14  114:12,13 130:2  <b>absolute</b> 115:7  <b>accelerated</b> 14:8,11,  20 15:20 17:1,5,6  18:13,19 20:16 22:18  24:14 53:6,9,15 58:14  61:6,12,21,25 64:22  65:7,13 66:16,25 67:9  82:2,3 85:10 90:21  103:24 112:14  <b>accept</b> 20:4 34:16  50:15 113:1,14 124:14  <b>accepted</b> 10:20,21,25  11:9  <b>accepts</b> 119:18  <b>access</b> 46:12  <b>accompanied</b> 120:1  <b>account</b> 21:19,25</p>
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