

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Evidentiary Hearing
8 November 8, 2017
9 Jefferson City, Missouri
10 Volume I
11
12 In the Matter of the)
13 Application of Missouri-)
14 American Water Company for an)
15 Accounting Authority Order) File No.
16 Related to Property Taxes in) WU-2017-0351
17 St. Louis County and Platte)
18 County.)
19
20 KIM S. BURTON, Presiding,
21 REGULATORY LAW JUDGE.
22
23 DANIEL Y HALL, Chairman
24
25 STEPHEN M. STOLL,
WILLIAM KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
COMMISSIONERS.

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

2 (WHEREUPON, the evidentiary hearing
3 began at 8:32 a.m.)

4 JUDGE BURTON: Good morning,
5 everyone. Today is November 8th, 2017. It's a
6 little after 8:30 in the morning. Let's go ahead
7 and go on the record in the application of
8 Missouri-American Water Company for an Accounting
9 Authority Order related to property taxes in
10 St. Louis County and Platte County. This is File
11 No. WU-2017-0351.

12 My name is Kim Burton, and I am the
13 Regulatory Law Judge assigned to this matter. At
14 this time we will go ahead and have the parties
15 enter their appearance for the record, and we will
16 begin with Missouri-American Water Company.

17 MR. ENGLAND: Thank you, Judge. Let
18 the record reflect the appearance of W.R. England
19 with the law firm of Brydon, Swearngen & England,
20 appearing on behalf of Missouri-American Water
21 Company, and with me is Tim Luft, attorney with
22 Missouri-American Water Company.

23 JUDGE BURTON: Thank you. Staff of
24 the Missouri Public Service Commission.

25 MS. MERS: Nicole Mers appearing on

1 behalf of Staff, and my information has been
2 provided to the court reporter. Thank you.

3 JUDGE BURTON: Office of the Public
4 Counsel.

5 MS. SHEMWELL: Good morning, and
6 thank you, Judge. Lera Shemwell and Ryan Smith
7 appearing on behalf of the Office of the Public
8 Counsel, and both of us have given our information
9 to the court reporter.

10 JUDGE BURTON: Midwest Energy
11 Consumers Group.

12 MR. WOODSMALL: David Woodsmall on
13 behalf of MECG.

14 JUDGE BURTON: St. Louis County.

15 MR. FOX: Robert E. Fox, Junior.

16 JUDGE BURTON: Could you turn your
17 microphone on? Push the little button.

18 MR. FOX: You really don't want to
19 hear this. Robert E. Fox, Junior. With me is
20 Susan Strain of the assessor's office. I'm here
21 for St. Louis County. I've turned in our exhibits,
22 our rebuttal, yeah, to the court reporter, our
23 material.

24 JUDGE BURTON: And she has your
25 address and contact information?

1 MR. FOX: Yes. Thank you.

2 MS. BURTON: Missouri Industrial
3 Energy Consumers had previously submitted a request
4 to me to be excused from attending this hearing.
5 They indicated that they have waived their right to
6 cross-examination and presenting their evidence.
7 And that request was granted.

8 At this time I would remind everyone
9 who is observing or participating in the hearing to
10 please silence your electronic devices.

11 Now, are there any procedural matters
12 that we need to address before we begin with
13 opening statements? Seeing no hands. We have the
14 list of the parties and their witnesses, and I
15 believe that we will begin with Missouri-American
16 Water Company.

17 MR. ENGLAND: Thank you, your Honor.
18 Good morning. My name is Trip England. I'm here
19 appearing on behalf of the Applicant,
20 Missouri-American Water Company.

21 This application involves a request
22 for an Accounting Authority Order, or an AAO,
23 seeking to defer certain increases in property tax
24 expense resulting from recent administrative
25 changes implemented by St. Louis and Platte County

1 assessors. These changes in the assessment
2 methodology employed by these counties will
3 increase Missouri-American's property tax expense
4 in 2017 by approximately \$4.8 million and in 2018
5 by approximately \$6.5 million.

6 These changes in the assessment
7 methodology primarily involve the use of longer
8 modified accelerated cost recovery, or the acronym
9 MACR, M-A-C-R, class lives. This also has been
10 referred to in the testimony as recovery periods.

11 In St. Louis County, for example, the
12 assessor is moving from the use of a seven-year
13 MACR class life to a 20-year class life for certain
14 distribution property. In Platte County, the
15 assessor is moving from a 20-year MACR class life
16 to a 50-year class life and, in addition, for the
17 first time is including construction work in
18 progress in its property tax valuation.

19 The net effect of these changes in
20 class lives or recovery periods is to significantly
21 increase the value of Missouri-American's property
22 subject to property tax and significantly increase
23 its tax liability. This is the first time in
24 ten-plus years that these counties have changed the
25 MACR class lives, and for Platte County the first

1 time ever that they have included construction work
2 in progress in the valuation of Missouri-American's
3 property.

4 Now, this Commission has adopted the
5 Uniform System of Accounts issued by the National
6 Association of Regulatory Commissioners, or NARUC,
7 and that USOA permits deferral of unusual and
8 extraordinary expenses. So the primary issue, if
9 not the sole issue, in this case to be determined
10 by the Commission is whether these property tax
11 increases are unusual and extraordinary, and we
12 would submit they clearly are.

13 The NARUC Uniform System of Accounts
14 defines extraordinary items as those items related
15 to the effects of events and transactions which
16 have occurred during the current period and which
17 are not typical or customary business activities of
18 the company.

19 JUDGE BURTON: Which account are you
20 referring to for this definition?

21 MR. ENGLAND: It's general
22 instruction No. 7. It's in our application,
23 footnote 2 on page 5.

24 JUDGE BURTON: And that's for the
25 NARUC 1976?

1 MR. ENGLAND: Yes. The Commission in
2 a 1996 order involving one of Missouri-American's
3 predecessor companies, the St. Louis Water Company,
4 noted that AAOs have historically been tied to the
5 occurrence of extraordinary items, events impacting
6 a utility that are unusual in nature and infrequent
7 in occurrence, and they include costs caused by
8 unpredictable events, acts of government and other
9 matters outside the control of the utility or the
10 Commission.

11 Clearly the decisions of the county
12 assessors in this case are unusual. The decision
13 to use substantially different and longer MACRS
14 class lives was the first time in ten years that
15 these -- ten-plus years, excuse me, that these
16 counties have made that shift or change in class
17 lives.

18 These positions were unpredictable as
19 Missouri-American had no advance notice of these
20 decisions until after they were made and, in fact,
21 after they had filed their property tax
22 declarations in both these counties.

23 They were also unpredictable in the
24 sense that they were completely unforeseen at the
25 time of the company's last rate case in 2016 and

1 have resulted in a significantly higher property
2 tax expense than the property tax expense built
3 into Missouri-American's current rates.

4 These decisions were unilateral
5 decisions by local government officials which were
6 outside the control of Missouri-American or this
7 Commission, and they will have a material impact on
8 the company's financial status.

9 For example, the increase in property
10 tax expense as a result of the assessment changes
11 by these counties is approximately \$7.5 million for
12 the 17-month period beginning in January of this
13 year, 2017, carrying through May of 2018 when we
14 expect a decision in Missouri-American's current
15 rate case.

16 After adjusting for income taxes,
17 this \$7.5 million of property tax increase
18 represents approximately 9.6 percent of Missouri-
19 American's 2016 net income. Clearly the actions of
20 St. Louis and Platte County assessors in
21 fundamentally changing the assessment methodology
22 that had existed in place for more than ten years
23 is extraordinary.

24 Now, Staff, Public Counsel, MCEG and
25 St. Louis County all oppose Missouri-American's

1 request, and they take issue with the fact that the
2 increase in the property taxes is not unusual or
3 extraordinary. Let me be clear. Missouri-American
4 is not saying that the payment of property tax
5 expense is extraordinary. It is the sudden
6 fundamental change in the assessment methodology
7 but these two counties that is extraordinary and
8 unusual.

9 We agree that property taxes are
10 routine expenses and that they can fluctuate from
11 year to year, primarily based on the level of
12 investment the company makes in each of its
13 counties, as well as tax changes -- tax rate
14 changes, excuse me, imposed by those counties. And
15 we're not seeking to defer increases to property
16 tax expenses of an ordinary nature. We are only
17 asking to defer the incremental increase due to the
18 change in the assessment methodology, which has not
19 happened for over ten years.

20 Moreover, the sheer magnitude of the
21 increase further underscores the extraordinary
22 nature of these counties' actions.

23 Public Counsel also takes issue with
24 the company's request as an impermissible request
25 for ratemaking determination in this case. Let me

1 make it clear that we are not asking for any
2 ratemaking decisions in this case. We will be
3 making some revisions to the prepared testimony to
4 make it absolutely clear that all we seek in this
5 case is a deferral of the property tax increase
6 until such time as that deferral can be addressed
7 in our pending rate case.

8 Speaking of that rate case, we have
9 proposed in that case, to the extent we are allowed
10 to defer these expenses, to amortize them over a
11 three-year period for recovery in future rates that
12 are set in the context of that rate case.

13 In this case, however, Missouri-
14 American is simply asking for authority to defer
15 that incremental property tax increase due solely
16 to decisions of St. Louis and Platte County
17 assessors to fundamentally change the assessment
18 methodology they are using.

19 Since Missouri-American is not
20 seeking any ratemaking determinations in this case,
21 the Commission need not address Public Counsel's
22 Issue No. 2, which deals with when an amortization
23 of this deferred debit should begin. In fact, we
24 believe the Commission cannot address this question
25 unless it also establishes an amortization period,

1 which again is not being asked or sought in this
2 case but will be addressed in the context of the
3 rate case.

4 Public Counsel witnesses -- or excuse
5 me -- Issues 3 and 4 are also irrelevant to the
6 application and the relief sought in this case. In
7 that regard, Missouri-American would agree with
8 MECG's characterization of these issues as largely
9 an academic debate between Staff and Public Counsel
10 and do not need to be decided in this case.

11 Finally, St. Louis County in opposing
12 Missouri-American's request claims that it is
13 Missouri-American's fault that it is in the
14 position it finds itself in. St. Louis County
15 claims Missouri-American is unique because it self-
16 reports its property tax to St. Louis County.

17 I would suggest to you that
18 Missouri-American is not unique in this regard as
19 all taxpayers, business or residential, must
20 self-report their property to St. Louis County, as
21 we do in all our other counties.

22 St. Louis County also says it relied
23 on Missouri-American for the assessment of
24 Missouri-American's property, but the statute is
25 clear that it is the county assessor who is

1 responsible for assessing the property, not the
2 taxpayer. In fact, St. Louis County witness
3 Suzanne Strain at page 6 of her testimony agrees
4 that Section 137.122 of the Revised Statutes of
5 Missouri places the responsibility on the assessor
6 to calculate depreciation on the property.

7 Missouri-American has always filed
8 its returns or, as they're called in St. Louis
9 County, property declarations with the county in
10 accordance with the assessor's guidance and in
11 cooperation and collaboration with that office.

12 Missouri-American's tax preparer
13 contacted the St. Louis County Assessor's Office in
14 2007 at the time the statute changed and the MACR
15 lives were adopted to determine the proper class
16 lives to be used to depreciate Missouri-American's
17 property, and Missouri-American's tax advisor was
18 advised to use the same depreciation schedules as
19 it had used in prior years.

20 So Missouri-American continued to use
21 seven-year class lives to depreciate its property,
22 not only for the 2007 return, but for every return
23 since then, up to its return initially filed in
24 2017. It wasn't until late May of this year, after
25 Missouri-American had filed its property tax

1 declaration, that St. Louis County directed
2 Missouri-American to do otherwise and use a 20-year
3 MACR life. But it also candidly acknowledged that
4 its failure to previously advise Missouri-American
5 to use a 20-year class life was a, quote,
6 oversight, end quote, on St. Louis County's part.

7 So St. Louis County's assertion that
8 Missouri-American has no one to blame for the
9 position it finds itself in is belied by the
10 statute which places sole responsibility on the
11 assessor's office to apply the appropriate
12 depreciation rates, and it is belied by St. Louis
13 County's own admission that the position
14 Missouri-American finds itself in is a direct
15 result of St. Louis County's oversight.

16 Thank you. I'll answer any
17 questions. Otherwise, I'll turn the lectern over
18 to the next.

19 COMMISSIONER STOLL: No questions.
20 Thank you.

21 JUDGE BURTON: Thank you,
22 Mr. England.

23 MR. ENGLAND: Thank you.

24 JUDGE BURTON: Ms. Mers.

25 MS. MERS: Good morning,

1 Commissioners and good morning, Judge. If it
2 pleases the Commission?

3 The only questions that the
4 Commission must decide today is, first, if this
5 increase in property tax is extraordinary, and
6 second, if it is extraordinary, is the cost
7 material?

8 Extraordinary by Commission precedent
9 and the USOA standards is anything that is
10 nonreoccurring, unusual or an unusual event or
11 activity, and a material expense is 5 percent or
12 more of a utility's net annual revenue.

13 Extraordinary is not an ordinary part
14 of doing business. For any business or person
15 really, what is more ordinary than property taxes
16 or increases in property taxes? Is that not one of
17 the most reoccurring, ordinary expenses there is?
18 There's a property tax bill once a year and we all
19 must pay it.

20 In general, actions taken to change
21 the parameters of how utility assets are assessed
22 by taxing authorities should be considered part of
23 the ordinary discretion available to those bodies
24 and should not be considered inherently
25 extraordinary in nature.

1 Moreover, for the bulk of the dollars
2 at issue today, there's nothing extraordinary about
3 St. Louis County assessing utility property at a
4 20-year life, which is the same rate that every
5 county Missouri-American operates in uses.

6 This is not a change in tax
7 methodology as Missouri-American is asserting.
8 It's simply a realization that a self-reporting
9 entity, by mistake or otherwise, had used the wrong
10 recovery life span, and this is a correction to fix
11 that issue.

12 And for Platte County, as Staff
13 previously stated, increases in property taxes or
14 changes in methods the property taxes are assessed
15 at, we find those to be ordinary and within the
16 discretion of the taxing body, so the 50-year
17 increase is not extraordinary in our view.

18 But if one was to view the Platte
19 County increase as extraordinary, the only amount
20 attributable to that change is \$400,000, which does
21 not meet the 5 percent materiality threshold for an
22 AAO. So we think that each discrete taxing
23 authority event must be extraordinary in nature and
24 each financial impact resulting from each discrete
25 taxing authority event must be material for the AAO

1 to be granted.

2 So on that sole issue today, all
3 parties except for the company agree that
4 Missouri-American's requests are not extraordinary
5 and, therefore, do not meet the requirements for an
6 AAO.

7 OPC has raised some other issues that
8 Staff does not believe to be central to the
9 determination of granting this AAO, but Staff would
10 like to make two comments regarding some of the
11 testimony filed in this case.

12 First, Missouri-American is a water
13 company and, therefore, not subject to FERC USOA
14 regulations or FERC accounting requirements.
15 Missouri-American only has to require -- comply
16 with requirements of NARUC USOA.

17 Second, Staff does agree with OPC
18 that ratemaking determinations are inappropriate
19 for an AAO request, but Staff also believes it is
20 equally inappropriate to make -- to propose
21 sweeping changes to how we account for AAOs or do
22 accounting requirements as part of an AAO request.

23 Mark Oligschlaeger will be on the
24 stand today to answer any of your questions, and
25 I'm happy to answer any questions you may have.

1 Thank you.

2 COMMISSIONER STOLL: No questions.

3 Thank you.

4 JUDGE BURTON: I have a quick
5 question. There was a discussion from Mr. England
6 saying that although the company was requesting an
7 amortization schedule of three years, that it
8 wasn't appropriate to make a determination in this
9 case because that would coincide with any decision
10 the Commission makes in the rate case. Does Staff
11 agree with that?

12 MS. MERS: Yes. We believe the
13 amortization period, if this was approved, would be
14 best addressed as part of the rate case proceeding.

15 JUDGE BURTON: And does the Staff's
16 position -- am I correct in stating that the
17 Staff's position is that Platte County's changes
18 would be considered extraordinary?

19 MS. MERS: No, we do not believe that
20 Platte County's increases are extraordinary because
21 we believe that any changes or increases are a part
22 of the discretion of the taxing authority. They
23 are not unusual that property taxes increase or
24 that a taxing authority may change the methodology
25 on how they assess property.

1 But if you were to take that argument
2 at face value, we say that, even if that was true,
3 which we don't believe, the amount of dollars at
4 issue are not material and, therefore, not
5 appropriate for an AAO request.

6 JUDGE BURTON: Okay. Thank you.
7 Ms. Shemwell.

8 MS. SHEMWELL: Thank you. Good
9 morning. May it please the Commission?

10 I'm Lera Shemwell. I represent the
11 Office of the Public Counsel. It is Public
12 Counsel's position in this case that payment of
13 property taxes is nothing new or different for
14 Missouri-American Water or for any Missouri utility
15 or for any of us. It is one of the most ordinary
16 of expenses. There's a reason for the saying that
17 the only things certain in life is death and taxes.

18 And Public Counsel's position is that
19 the Commission should deny the AAO because these
20 expenses are not extraordinary. The Commission has
21 traditionally considered an AAO when an
22 extraordinary event such as the Kansas City ice
23 storm occurs.

24 The company would have the Commission
25 believe that there's something unusual, unforeseen

1 or infrequent about this expenses. That's simply
2 incorrect. The requirement that a company pay
3 property taxes in the counties in which it operates
4 is one of the most predictable expenses it has.

5 Moreover, St. Louis County did not
6 make any changes to its calculation under the MACRS
7 lives, or the modified accelerated cost recovery,
8 or any other change to its property tax methodology
9 except to conform to Chapter 137 of the Missouri
10 statutes which the Legislature updated to adopt
11 MACRS statewide in 2008.

12 MACRS is the current tax depreciation
13 system in the United States. Under this system,
14 the capitalized cost of tangible property, both
15 real and personal property is recovered over a
16 specific life by depreciation similarly to the way
17 that the Commission handles depreciation, and the
18 IRS sets out classes of property.

19 Missouri-American is a sophisticated
20 company and has correctly reported its taxes in 23
21 of the 24 counties in which it operates in
22 Missouri. The evidence will show that both the
23 company and Sansone, the business that does the tax
24 reporting for MAWC, were aware that the Missouri
25 Legislature implemented MACRS statewide in 2008.

1 Certainly the company and its
2 reporting company should have known it was
3 reporting to St. Louis in a different manner than
4 it was reporting to the other 23 counties,
5 including Jefferson County, St. Charles and Platte
6 County. St. Louis reporting was an outlier. The
7 company did notice that.

8 The fact that they didn't pursue --
9 they claim they didn't know or that St. Louis
10 changed, but they should have pursued that. In his
11 testimony Mr. LaGrand, I believe it's on page 14,
12 states the company may have been trying to educate
13 itself about future changes in assessment
14 methodology. All they had to do to educate
15 themselves was call the assessor, call surrounding
16 counties to see what they were doing.

17 They knew what they were doing in
18 surrounding counties. They could have called on
19 their distribution property, which is their real
20 property. They could have called Laclede or
21 Ameren, who also had distribution property in St.
22 Louis County, and said, hey, what are you guys
23 doing? They could have taken affirmative steps to
24 educate themselves.

25 They claim the customers benefit, but

1 that's not really true because the school districts
2 in St. Louis County and other county services such
3 as police and fire have been shortchanged. Those
4 are the entities that are supported by these taxes.
5 The school districts in immediately surrounding
6 St. Louis counties and Jefferson County have
7 received the property taxes due based upon Missouri
8 statute. So we urge the Commission to deny the
9 AAO.

10 In granting AAOs, I'd like to address
11 Public Counsel's position. The Commission does
12 have a longstanding ratemaking policy in AAO cases
13 not to grant an AAO unless there's an extraordinary
14 event, and Public Counsel is not suggesting any
15 sweeping change to the way the Commission has
16 always handled this.

17 We recommend that the Commission be
18 aware that there are implications if the Commission
19 actually orders the company to record a regulatory
20 asset in Account 186. Under Generally Accepted
21 Accounting Principles, or GAAP as we call it, which
22 is enforced by the SEC, the utility may reflect a
23 regulatory asset if the utility believes that the
24 deferred expenses have a probability of recovery.
25 That informs the financial markets that the utility

1 believes it is in the position to recover these
2 costs in future rates.

3 If the Commission orders the company
4 to record the asset in 186, there is an implication
5 that it is agreeing that there is a probability of
6 recovery. The Commission specifically says, okay,
7 we're not making any ratemaking decisions, and I
8 believe that that has always been the Commission's
9 policy, that it's not making ratemaking decisions.

10 What we are suggesting is that the
11 Commission realize if it specifically orders the
12 company to record a regulatory asset in 186, there
13 is at least the implication of probability of
14 recovery. And I'm thinking the Commission's saying
15 we are neutral on the probability of recovery. We
16 will consider that in the context of a full rate
17 case where we are considering all relevant factors,
18 and that's the only place we're going to make a
19 ratemaking decision.

20 Again, we're recommending the
21 Commission not grant this AAO, but should they do
22 so, they should consider saying in their order that
23 they are not granting or agreeing that there is any
24 probability of recovery but they are simply
25 granting the AAO for later ratemaking determination

1 in the rate case.

2 Public Counsel also has the position
3 that amortization should begin immediately. For
4 example, MAWC pays operating expenses in 2017, pays
5 its taxes in 2017, and it should start amortizing
6 the following month, which is January 2018.

7 Customers should assume no
8 responsibility or liability for MACRS' (sic)
9 apparent misreporting of its property taxes in
10 St. Louis County. I think that the evidence will
11 show that they at least should have known and were,
12 in fact, questioning what was the proper method in
13 St. Louis. Ms. Strain has e-mails attached to her
14 testimony that she will discuss where they
15 acknowledge realizing that the state has gone to
16 MACRS statewide in 2008.

17 And we believe that by statute it is
18 the responsibility of the company to self report
19 and to correctly and accurately self report its
20 taxes. It was doing that in 23 of 24 counties. So
21 it had to be apparent that St. Louis, there was
22 something different there.

23 And again, the company witness says
24 that they were trying to educate themselves. It
25 would have been simple to find out what the correct

1 -- what St. Louis method for tax reporting was.

2 Judge?

3 COMMISSIONER STOLL: No questions,
4 your Honor.

5 MS. SHEMWELL: Thank you.

6 JUDGE BURTON: I believe Mr. Fox is
7 next. Oh, Mr. Woodsmall.

8 MR. WOODSMALL: I'll be very, very
9 brief. David Woodsmall on behalf of Midwest Energy
10 Consumers Group.

11 MECG agrees with Staff and Public
12 Counsel as it comes to the application of the
13 extraordinary standard to the facts in this case.
14 I just wanted to point out a couple things.

15 Three of the four of you may recall
16 that in September of 2015 you considered KCP&L's
17 request for a property tax tracker. Tracker does
18 the same thing as an AAO in this case, it defers
19 costs for potential later recovery. There the
20 Commission said, quote, property taxes are normal
21 operating costs that will continue to occur every
22 year, and an annualized level of such expenses to
23 include in rates can be reasonably calculated.
24 KCP&L's property taxes are not rare or unusual.
25 The Commission concludes that KCP&L has not met its

1 burden of proof to demonstrate the projected
2 property tax increases are extraordinary, so its
3 request for property tax tracker will be denied.

4 So three of the four of you have
5 already decided an issue very much like this and
6 rejected it. KCP&L didn't like that decision.
7 KCP&L took it to the Western District Court of
8 Appeals in an appeal, and the Court of Appeals
9 agreed with you. Quote, in deciding that only
10 extraordinary costs qualify for deferral, the PSC
11 has followed the USOA's guidance. We will not
12 second guess the PSC's reasoned decision that only
13 extraordinary items may qualify for deferred
14 treatment, unquote. So you've decided this issue
15 just two years ago.

16 MECG agrees, like I say, with Public
17 Counsel and with Staff on the application of that
18 standard to the facts in this case. The only other
19 thing I'd like to point out, Mr. Oligschlaeger
20 raises this in his rebuttal testimony, what we're
21 talking about here is property tax costs for four
22 months. They have to pay this property tax at the
23 end of this year, the end of 2017. They have a
24 rate case going now, which, as Mr. England notes,
25 rates will go into effect in May. So we're only

1 talking about four or five months. So that's the
2 implications of your decision.

3 Thank you.

4 JUDGE BURTON: Thank you. Opening
5 statements from St. Louis County.

6 MR. FOX: Yes, your Honor. My name
7 is Robert E. Fox, Junior. I'm with the St. Louis
8 County Counselor's Office. Been there for 37
9 years, but I look older. It's hell.

10 Today St. Louis County stands opposed
11 to the water company's Accounting Authority Order.
12 Okay. I'll refer to them as water company. The
13 water company has asserted that in late May and
14 early June 2017, it was first notified by St. Louis
15 County that the way in which it had previously
16 assessed water company's property for property tax
17 purposes for at least ten years was dramatically
18 changing.

19 This is untrue. First, St. Louis
20 County never assessed the water company's property
21 because the water company is a self-reporting
22 utility, so that St. Louis County relied, and
23 that's the key, relied on the water company for the
24 assessment of its property. And under 137.340, the
25 water company was to provide a statement, true

1 value of its assets, and it wasn't doing it, was
2 using a seven-year recovery period versus a 20-year
3 recovery period that is required under the statute
4 of 137.122. And under 137.340 they are to report
5 these assets as a true value, and they weren't
6 doing it.

7 The property that the water company
8 is challenging the assessment, the valuation is
9 unique property, and they were to report this
10 property to St. Louis County using the proper
11 value, using the proper rate of recovery. As
12 noted, the water company was notified long before
13 May of 2017 that the 20-year recovery period would
14 be based on a class life of equipment as set out
15 under the modified accelerated cost recovery
16 system, MACRS, if that's how you pronounce it -- I
17 think it's French -- table under the IRS code per
18 statute 137.122, Revised Statutes of Missouri, and
19 not the seven-year recovery period.

20 Okay. Mr. England notes that, again,
21 the Sue Strain, the -- with the assessor's office,
22 yes, she agrees, he says, with the water company
23 that the assessor is responsible for calculating
24 the depreciation. This is under paragraph 18, the
25 answer.

1 What he fails to do is give the
2 second half of the statement, which is, however, it
3 is the responsibility of the taxpayer pursuant to
4 137.340 to file the return listing all tangible
5 property with the assessor using the proper period
6 of recovery given a true value. You only get the
7 half statement. The whole statement is, it's the
8 water company that's to provide the necessary
9 valuation for the County to come up with a proper
10 assessment.

11 As a self-reporting utility,
12 St. Louis County relied on the water company's
13 assessment of its personal property located in
14 St. Louis County. As noted in other opening
15 statements, for 23 other counties located in
16 Missouri the water company was using the proper
17 assessment in its recording of its property located
18 in St. Louis County.

19 Why the water company failed to
20 properly assess its personal property located in
21 St. Louis County is unclear. Water company has no
22 explanation for its failure to follow Sections
23 137.122 and 137.340 of the Revised Statutes of
24 Missouri. There's no explanation except, gee whiz,
25 St. Louis County, just an oversight, which it was,

1 but it was an oversight because we relied. We
2 relied on them to give a true accurate statement,
3 and they failed to do that.

4 And they knew -- if you see in the
5 following -- in the -- as early as March 2007 an
6 e-mail by Karen Leahy of St. Louis County, who had
7 been in the position that Ms. Strain is now in,
8 informed Tammy Frost of Sansone, the tax rep for
9 the water company, how the water company was to
10 assess its personal property in St. Louis County.

11 Ms. Leahy informed Ms. Frost that if
12 you have depreciated locally assessed personal
13 property items in the past using our depreciation
14 schedule, I see no reason why the '06 acquisition
15 shouldn't be depreciated using the new recovery
16 schedules. These are the new recovery schedules
17 enacted by the Legislature, not going under the old
18 system with going on the seven-year period of
19 recovery. It would seem consistent with how we
20 have been doing it. I've used the existing
21 schedules to locally assess the railroads and other
22 utility companies that report to us also will apply
23 the '06 rates. The only other company, only other
24 utility in St. Louis County that is similar to
25 water company is Laclede Gas, and it uses the

1 20-year recovery period.

2 Water company's assertion that the
3 tax increase for St. Louis County is unusual and
4 extraordinary is false. The water company should
5 have been reporting its personal property located
6 in St. Louis County at the proper assessment rate
7 since 2007 and, as a self-reporting utility, it
8 failed to do so. The water company has no one to
9 blame but itself for the proposition it -- position
10 it finds itself in with regard to St. Louis County.

11 Water company has pooled the tax
12 increase of the 50-year recovery period that Platte
13 County's putting forward with St. Louis County.
14 This is extremely misleading. St. Louis County's
15 only requiring the water company to follow the
16 statute in place, not asking to change the recovery
17 period or anything else.

18 St. Louis County's methodology has
19 not changed. St. Louis County's requiring the
20 water company to change its reporting procedure of
21 its distributing assets in St. Louis County from a
22 seven-year recovery period to a 20-year recovery
23 period. And that's again pursuant to
24 Sections 137.122 and 137.340.

25 The reporting procedures of recovery

1 periods was under water company's control, not
2 St. Louis County. Susan Strain will take the stand
3 to answer any of your questions. She'll do better
4 than me.

5 COMMISSIONER KENNEY: I have a
6 question, just to try to understand the reporting
7 part of it. So when the utility -- the utility
8 reports their personal property?

9 MR. FOX: Yes.

10 COMMISSIONER KENNEY: Do they -- on a
11 20-year basis, do they -- let's say they have
12 \$100,000 in personal property. Do they report 100
13 or do they report -- are they supposed to like 95,
14 a 20 percent deprec-- I'll ask you. When you're
15 looking at her...

16 MR. FOX: Well, she's got to be
17 easier on the eyes than I am.

18 COMMISSIONER RUPP: I have a
19 question. Has St. Louis County reviewed all the
20 self-reporting tax filings of all the public
21 utilities to ensure that they're doing it
22 correctly?

23 MR. FOX: Well, I know that, as I
24 said, the one that is similar in this regard is
25 Laclede Gas, and Laclede Gas has been doing from

1 day one the again 20-year recovery period. And
2 again, the water company wanted to know were they
3 doing it, and we informed them, yes, they were.
4 And so as it stands, that is the only other utility
5 that's in the same position as the water company.

6 COMMISSIONER RUPP: Thank you.

7 JUDGE BURTON: Thank you, Mr. Fox.
8 Why don't we take a quick ten-minute recess and we
9 will reconvene at 9:30.

10 (A BREAK WAS TAKEN.)

11 JUDGE BURTON: I believe,
12 Mr. England, we are ready for your first witness.

13 MR. ENGLAND: Thank you, your Honor.
14 Let me call Mr. John Wilde to the witness stand,
15 please.

16 (Witness sworn.)

17 MR. ENGLAND: Judge, Mr. Wilde has
18 two pieces of prepared testimony. There's the
19 direct testimony and then surrebuttal testimony,
20 and unless you tell me otherwise, I propose we mark
21 those as 1 and 2 respectively.

22 JUDGE BURTON: That's fine.
23 Mr. Wilde's direct will be Exhibit 1 and the
24 surrebuttal will be Exhibit 2.

25 MR. ENGLAND: Thank you, your Honor.

1 JOHN WILDE testified as follows:

2 DIRECT EXAMINATION BY MR. ENGLAND:

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

5 A. John R. Wilde.

6 Q. Mr. Wilde, by whom are you employed
7 and in what capacity?

8 A. Missouri-American Services Company.

9 Q. And in what capacity, sir?

10 A. As Senior Director of Corporate Tax.

11 Q. Mr. Wilde, have you caused to be
12 prepared and filed in this proceeding direct
13 testimony which I believe has been marked for
14 purposes of identification as Exhibit No. 1?

15 A. Yes, I have.

16 Q. And do you have that in front of you?

17 A. Yes, I do.

18 Q. Are there any changes or corrections
19 that you need to make?

20 A. Yes. I have two changes. On page 3,
21 lines 22 and 23, I'd like to strike out of the
22 question -- or out of the answer "and therefore
23 until all eligible costs are amortized and reversed
24 in -- are recovered in rates." That statement was
25 added by mistake.

1 Q. Okay. So the sentence would now end
2 on line 22 after the word proceeding?

3 A. Correct.

4 Q. Thank you. Did you say you had
5 another correction?

6 A. Yes, I did. On page 7, line --
7 beginning on line 23, the question, the answer only
8 addressed the first part of that question, so I'd
9 like to strike the second part of the question or
10 the middle part or -- so it's line 23, after -- add
11 a comma, or pending rate cases WR-2017-0285 and
12 SR-217-0286. I'd like that part struck out of the
13 question. The increase was only accounted for in
14 the prior rate case.

15 Q. Are there any other corrections or
16 changes?

17 A. No, none.

18 Q. With those corrections in mind, was
19 this prepared direct testimony either prepared by
20 you or under your direct supervision?

21 A. It was.

22 Q. And are the answers that are
23 contained in there true and correct to the best of
24 your knowledge, information and belief?

25 A. They are.

1 Q. Thank you. Let me turn your
2 attention now to what has been marked for purposes
3 of identification as Exhibit No. 2. Is that your
4 prepared surrebuttal testimony?

5 A. Yes, it is.

6 Q. And are there any corrections or
7 changes you need to make to that testimony?

8 A. None that I'm aware of at this time.

9 Q. Okay. So was that also prepared by
10 you or under your direct supervision?

11 A. Yes, it was.

12 Q. And if I were to ask you the
13 questions that appear in that prepared testimony,
14 would your answers here today be essentially the
15 same?

16 A. Yes, they would.

17 MR. ENGLAND: Your Honor, I don't
18 think I have any other questions of the witness
19 and, subject to cross-examination, would tender
20 Exhibits 1 and 2.

21 JUDGE BURTON: To clarify for the
22 record, on page 7 of the direct, strike line -- on
23 line 23, or pending rate cases, through page 8,
24 lines 1 and 2?

25 MR. ENGLAND: Actually, just to the

1 end of the closed paren after SR-2017-0286.

2 JUDGE BURTON: And then we would keep
3 the "account for the increased property tax expense
4 resulting from the property tax assessment
5 changes"?

6 MR. ENGLAND: That is correct.

7 JUDGE BURTON: Okay. Thank you.

8 MR. ENGLAND: Thank you.

9 JUDGE BURTON: Exhibits 1 and 2 have
10 been offered. Are there any objections?

11 (No response.)

12 JUDGE BURTON: Okay. Hearing none,
13 Exhibits 1 and 2 will be admitted.

14 (EXHIBITS 1 AND 2 WERE RECEIVED INTO
15 EVIDENCE.)

16 JUDGE BURTON: I believe that we
17 begin Mr. Woodsmall for --

18 MR. WOODSMALL: No questions.

19 JUDGE BURTON: Mr. Fox, do you have
20 any questions for this witness?

21 MR. FOX: I have a few.

22 CROSS-EXAMINATION BY MR. FOX:

23 Q. How is it that the water company
24 reports its depreciation schedule with the IRS
25 concerning the St. Louis County properties?

1 A. There's no reporting to the IRS of
2 depreciation schedules. There's a report of a
3 result.

4 **Q. Are the results based upon the**
5 **20-year recovery period or on the 7-year recovery**
6 **period?**

7 A. It's based on the class life that
8 is -- for the property that you're discussing, it's
9 the class life that's related to the 20-year MACRS,
10 correct.

11 **Q. Okay. So for St. Louis County, up**
12 **until 2017, the water company wasn't using the**
13 **20-year recovery period, correct?**

14 A. Wasn't using it for the St. Louis
15 County declarations?

16 **Q. Right.**

17 A. That's my understating, yes.

18 **Q. Okay. But in 23 counties of the 24**
19 **counties it's located in Missouri, the water**
20 **company was using again the 20-year recovery**
21 **period, correct?**

22 A. No.

23 **Q. No?**

24 A. My understanding is that there was a
25 transition that was occurring in all the counties

1 and moving towards the 20-year modified, and there
2 was an agreed-to transition period in those
3 counties that was going forth. So not every -- if
4 you look at the e-mail attached to Ms. Strain's
5 testimony, you'll see that that was explained.

6 **Q. I'm sorry. Whose e-mail?**

7 A. There was an e-mail attached to
8 Ms. Strain that was basically some clarification
9 from a Ms. Tammy Frost that covered that, that
10 there was a transition going on.

11 **Q. Are you talking about Exhibit 3 of**
12 **the County's?**

13 A. I don't know what the number is, but
14 it's Ms. Strain's testimony, it's Attachment 1, and
15 it's an e-mail correspondence between Ms. Elizabeth
16 Arriaga and Tammy Frost, and it reminds her that up
17 until two years ago that Jefferson -- so it says,
18 as a reminder, some counties phased this in over a
19 period of years to combine with their existing
20 county schedules, while it converted later such as
21 Jefferson County a couple years ago.

22 **Q. Okay. With respect to St. Louis**
23 **County, was there any transitional period discussed**
24 **with St. Louis County?**

25 A. The only discussion that I'm aware of

1 that occurred between the County and Ms. Frost or
2 our consultant was the e-mail in 2007 which the
3 County instructed us to continue to use the same
4 type of recovery period.

5 Q. On that particular e-mail it talks
6 about the new schedule, correct? If you look at
7 what you've put with your surrebuttal, I think it
8 is. It states -- it says, Tammy, if you have
9 depreciated the locally assessed personal property
10 items in the past using our depreciation schedules,
11 I see no reason why the '06 acquisition shouldn't
12 be depreciated using the new recovery schedules.
13 This would seem consistent with how we have been
14 doing it.

15 A. Yeah. And the property that was in
16 question, so in context, the property in question
17 would have been the same MACR class life property
18 that we were using before in the prior schedules
19 were using a seven-year schedule. And so the
20 conversion over by inference is -- would be go to
21 the seven-year schedule. That's the interpretation
22 that Ms. Frost took from it and --

23 Q. Wait a second. Do you have anything
24 to support that other than your statement?

25 A. Only just the actual filings of the

1 return for the subsequent ten years.

2 Q. Well, and that's the whole question
3 about this is, again, you-all knew about it, and it
4 is obvious from the e-mail from Tammy Frost to
5 Elizabeth, we frequently talked about this, the
6 impact it might have. You understand what I'm
7 saying?

8 A. No.

9 Q. No? If you look at -- do you have a
10 copy of Exhibit 3, County's Exhibit 3?

11 A. Whose Exhibit 3?

12 Q. It's rebuttal testimony of Susan
13 Strain.

14 A. Okay.

15 Q. Or Suzanne Strain.

16 A. Exhibit 3?

17 Q. Right.

18 A. Sure.

19 Q. It says, I was contacted by St. Louis
20 County yesterday regarding the 2017 filings of
21 American Water. We have discussed frequently of
22 Missouri's implementation of MACRS depreciation
23 schedules statewide for the valuation of personal
24 property and the potential impact should that occur
25 fully in St. Louis County.

1 Okay. If this was going on -- and
2 again, it was enacted in 2008. If this was going
3 on for the past ten years, why wasn't it being --
4 again, the 20-year recovery period, why wasn't the
5 water company using it with St. Louis County?

6 A. So again, I wasn't around for all
7 those years. Only been with American Water for a
8 year and a half. But if you look at the -- my
9 understanding of the statutes is the 20-year MACRS
10 is guided -- you guide that -- or guided to that
11 based on the property being personal property.

12 If you look at the statute, the
13 statute classes our property as real property. So,
14 therefore, there's not a direct -- folks keep
15 saying that there's a direct correlation, you
16 should use the 20-year MACRS, but there's not a
17 direct statutory requirement to do that.

18 Q. Why was the water company doing it
19 with the 23 other counties of Missouri?

20 A. Because that's what the particular
21 county assessor would have instructed us to do or
22 provide the form. Again, if you look at the
23 statute where it talks about self declaration, it
24 talks about the fact that the county will provide
25 the form.

1 Q. Did the water company ask for the
2 form?

3 A. I assume that the form was
4 collaboratively -- we -- the form that actually
5 St. Louis County provides doesn't have a 20-year
6 life on it. Only has a seven-year life on it.
7 Doesn't go up to 20-year property, number one.
8 Number two is the -- so the company
9 uses a form that they've created, I assume in
10 collaboration with the County, and that's what it
11 uses to report. It's a spreadsheet, I believe.

12 Q. When was the water company going to
13 transition itself into the 20-year recovery period
14 with St. Louis County?

15 A. When instructed to do so by the
16 County.

17 Q. Okay. And so again, the water
18 company has been instructed and offered a lesser, I
19 guess, assessment portion for 2017, correct?

20 A. Yes. It was offered after the
21 reporting period, so it was -- it was done as part
22 of the assessor coming to their assessment.

23 Q. Okay. Again, trying to help the
24 water company transition itself, not the water
25 company transitioning but the County transitioning,

1 correct?

2 A. Yes, I believe that's the role that
3 the County plays in that.

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

6 JUDGE BURTON: Staff?

7 MS. MERS: May I approach the
8 witness?

9 JUDGE BURTON: You may.

10 CROSS-EXAMINATION BY MS. MERS:

11 Q. Mr. Wilde, did you prepare any
12 responses to Staff data requests in this case?

13 A. Yes, I did.

14 Q. Okay. I'm going to hand you Staff
15 Data Request 3. Did you prepare the answer to that
16 one?

17 A. Yes, I did.

18 Q. Okay. And is one of the questions in
19 that data request in regards to the 24 counties
20 Missouri operates in and how they classified the
21 plant at issue in their 20-year class life,
22 correct? I think it's the first question, first
23 subpoint.

24 A. Yes.

25 Q. Okay. And your response to that data

1 request is that 23 of the 24 counties classify the
2 plant at issue as a 20-year MACR class life; is
3 that accurate?

4 A. That's accurate for the current year,
5 2017.

6 Q. Okay. And would your answer to that
7 data request be the same today?

8 A. Yes.

9 MS. MERS: At this time I'd like to
10 go ahead and offer DR 3 into evidence.

11 JUDGE BURTON: We'll mark that as
12 Exhibit 3, and that's Staff's Data Request 3. Are
13 there any objections to the admission of Exhibit 3?

14 (No response.)

15 JUDGE BURTON: Seeing none, Exhibit 3
16 is admitted.

17 (EXHIBIT 3 WAS RECEIVED INTO
18 EVIDENCE.)

19 MS. MERS: I have no further
20 questions. Thank you.

21 JUDGE BURTON: Public Counsel?

22 MR. SMITH: Yes. And permission to
23 cross from my seat?

24 JUDGE BURTON: That's fine.

25 CROSS-EXAMINATION BY MR. SMITH:

1 Q. Good morning, Mr. Wilde.

2 A. Good morning.

3 Q. What relief does the company expect
4 to receive from the Commission that the utility
5 cannot already provide to itself?

6 A. I'm not really a ratemaking expert,
7 so I would have to defer to Brian LaGrand on that.

8 Q. Are you -- are you aware that other
9 NARUC USOA accounts require preauthorization from
10 the Commission prior to booking those accounting
11 items?

12 A. Again, that's outside my expertise.

13 Q. There were some questions earlier
14 when your testimony was being offered about changes
15 made to your testimony.

16 A. Yes.

17 Q. And originally wasn't the company
18 requesting ratemaking treatment from the
19 Commission?

20 A. Again, that's outside my expertise,
21 and to the extent that I stated it originally, it
22 probably was a mistake in how I understood the
23 Commission to work in Missouri. That's my first
24 experience with the Missouri Commission.

25 Q. To the best of your knowledge, is the

1 company still seeking to ask the Commission to
2 grant a regulatory asset in this case?

3 A. Again, I would have to defer to Brian
4 LaGrand.

5 Q. Now, it is in your testimony in
6 direct where you talk about that. That's the
7 purpose of your testimony in direct; would you
8 agree with that? And I can point you to --

9 A. Please.

10 Q. Sure. If look at page 3, lines 16
11 through 23. Let me know when you're there.

12 A. Yes. That's the question I struck,
13 yep.

14 Q. And the purpose of your testimony is
15 twofold, correct?

16 A. Yes. The second was modified, right.

17 Q. And the first part is to record on
18 its books a regulatory asset?

19 A. That's correct. That's my
20 understanding of the ask at the time that that
21 testimony was written, and it's still my
22 understating, but I would recommend that you ask
23 Brian LaGrand to clarify that.

24 Q. So that question may no longer be
25 true, or the answer to that question?

1 A. I believe that answer to still be
2 true, again, but again, it's not -- my expertise is
3 on the tax aspect and the tax treatment. So I
4 think he's better positioned to answer that.

5 Q. Okay. Fair enough. I wanted to talk
6 a little bit about materiality and the relationship
7 between Platte County and St. Louis County. To
8 your knowledge, is there any causal relationship
9 between what happened in Platte County and what
10 happened in St. Louis County?

11 A. Could you define causal to me in that
12 context?

13 Q. Yeah. Was there any cause and effect
14 between the changes to the adjustments of the
15 assessor's office in Platte County, was that
16 related or -- to what was happening in St. Louis
17 County? There wasn't a conspiracy between the two
18 counties, correct?

19 A. They didn't act the same in -- they
20 both acted in the same direction. They didn't act
21 in concert, going to the same position. So I can't
22 say that would be the case, no.

23 Q. To the best of your knowledge?

24 A. Best of my knowledge.

25 Q. As to the materiality of St. Louis

1 County, isn't it true that the -- as to the
2 materiality of the value of any deferrals for
3 Platte County, isn't it true that would be less
4 than 5 percent of Missouri-American's 2016 net
5 income as reported by their annual report?

6 A. That would be my understanding if you
7 look at Platte only. Again, I have not done those
8 calculations.

9 Q. So you haven't done materiality
10 calculations in this AAO case?

11 A. I have seen those done with respect
12 to the combined numbers, not the separate numbers.

13 Q. And when you saw those done, to the
14 best you're able to remember, the overall value of
15 the deferrals in Platte County was less than
16 5 percent; isn't that true?

17 A. I didn't see the separate percentage,
18 but based on simple math, yes.

19 Q. In your testimony, either Exhibit 1,
20 your direct testimony, or Exhibit 2, your rebuttal
21 testimony, did you cite to any accounting authority
22 in your testimony that would imply or expressly
23 authorize the utility to chain together multiple
24 unrelated accounting events to meet the materiality
25 threshold?

1 A. Again, can you point to anything in
2 my testimony where I did that?

3 Q. I guess that's my question to you.

4 A. Not that I'm aware of.

5 MR. SMITH: No further questions.

6 JUDGE BURTON: Any questions from the
7 Commission?

8 COMMISSIONER STOLL: No questions,
9 your Honor.

10 QUESTIONS BY COMMISSIONER KENNEY:

11 Q. Good morning.

12 A. Good morning.

13 Q. I'm just trying to get a little
14 handle on the just understanding how the numbers
15 come together. So when you report the value of the
16 assets, the county that you're in has a mill rate,
17 and they come up with your tax for that -- for that
18 year, correct?

19 A. The process is, is that there is a
20 declaration that's made in most counties. Some
21 counties actually have you compute on their --
22 based on their form or on an agreed-to form, they
23 have you compute to an estimated true value
24 calculation.

25 Q. Is that estimated true value

1 calculation the value of the asset less
2 depreciation?

3 A. In some counties it is.

4 Q. So some counties you just --

5 A. They will provide -- they typically,
6 if you look at the forms provided by the counties
7 in cases like, for example, St. Louis County, they
8 will actually have a column in there that has a
9 depreciation factor listed for you to use.

10 Q. Okay. But what about St. Louis
11 County?

12 A. St. Louis County, because that form
13 that they use is strictly for personal property
14 reporting, it's been modified by the taxpayer
15 again.

16 Q. That's not my question. Do they have
17 a form for you specifically?

18 A. No.

19 Q. Okay. So do you -- then my question
20 then goes back then, do you report the value less
21 depreciation on the form, when you report a number
22 to them?

23 A. On the schedules that we provide
24 them, yes.

25 Q. So if the value's \$100,000, and year

1 one that's worth \$100,000, correct?

2 A. Correct.

3 Q. Value you would report. In year two,
4 under a seven-year depreciation schedule, that
5 value would be about \$85,700, roughly?

6 A. Yes, using -- that's right.

7 Q. So if you used a 20-year depreciation
8 schedule, it'd be -- you'd be reporting year two
9 95,000?

10 A. It's roughly that. It's roughly
11 that.

12 Q. So that difference of like 95 --
13 \$9,300 is -- it's a value we're talking about for
14 on that, the numbers I just used, the difference
15 that could have been reported. So the customers --
16 if you reported a schedule on a 20-year, the
17 customer would have been paying that in rates,
18 right?

19 A. Absolutely, yes.

20 Q. But because you didn't report it, it
21 changes the company's -- after you pay that taxes,
22 until we get new rates go into effect, the
23 company's liable for that percentage difference,
24 which is about 9.7 percent roughly, right?

25 A. Yeah. There's not a direct

1 correlation there, but essentially, yes, value of
2 your property will translate into a lower tax bill
3 in general.

4 Q. I just wanted to understand the
5 process.

6 A. Yeah.

7 Q. So you're on a -- you put it on a
8 seven-year depreciation schedule instead of a
9 20-year depreciation schedule which the statute --
10 I think it was passed in what, 2008, to call for a
11 20-year depreciation schedule?

12 A. For personal property. So again --

13 Q. I thought -- I thought it was
14 included in equipment used in gathering, treatment,
15 distribution of water should be assessed during a
16 20-year recovery period and will be based on the
17 class life of equipment set out in the MACRS.

18 A. That's in the personal property
19 section of that statute, so that's directing you
20 for -- it's specific to personal property.

21 Q. So we're not talking about equipment
22 that's used in gathering, treatment, distribution
23 of water?

24 A. We are, but if you look at the other
25 parts of the statute, the statute basically has

1 come to the conclusion that pipes in the ground
2 aren't personal property and that's the real
3 property and, therefore, you don't go -- you don't
4 get to that section.

5 Counties have been using that
6 section, and rightfully so, because if you look at
7 the whole guidance, it's kind of odd. They give
8 you --

9 **Q. If you can tell me what number, I've**
10 **got it right here.**

11 A. It's right in front of the -- it's
12 when you talk about the classification of property
13 in the statute, right before that section. I'm not
14 a lawyer, so I don't like to cite code. But yeah,
15 if you look at the -- if you look at the code just
16 before that section that deals with the MACRS
17 depreciation lives, it will say first you've got to
18 get to a classification of what the property is,
19 and that's where it gets confusing.

20 **Q. Then are you saying that the counties**
21 **are it wrong, the assessors?**

22 A. No. The counties -- the counties are
23 trying to get the fair value or true value, and
24 that's really the whole --

25 **Q. That's not really what we're arguing,**

1 right?

2 A. That's the whole intent. Well, it's
3 the method of the way you get there.

4 Q. It's a depreciation schedule. Really
5 I don't know why the company would care because
6 you're not paying -- the money comes out of the
7 customer if it's done -- we wouldn't be in this
8 dispute at all if you'd used 20 years. It wouldn't
9 matter. You'd be recovering your money.

10 A. Right.

11 Q. The problem is there's no recovery
12 because there's a seven-year, now you're going to a
13 15-year, then 20-year. So starting new rates, it's
14 okay, but -- because the customer would have paid
15 it, right?

16 A. Right.

17 Q. But now the company's getting stuck
18 because -- and it's just for that short amount of
19 time. It's a lot of money.

20 A. Yeah. Roughly a year and a half,
21 yes.

22 Q. Thank you.

23 MR. ENGLAND: Your Honor, may I -- do
24 you have any questions about the statute? I can
25 give him a copy of it.

1 COMMISSIONER KENNEY: I'm good.

2 JUDGE BURTON: I have a few questions
3 for you, sir.

4 QUESTIONS BY JUDGE BURTON:

5 Q. How long have you been employed with,
6 is it American Waterworks Services?

7 A. I joined the company in March of
8 2016, so about a year and a half.

9 Q. And your current job title?

10 A. Is Senior Director of Tax.

11 Q. How much of your job responsibility
12 involves evaluating taxes or tax filings for
13 Missouri-American Water Company?

14 A. So that has been transitioning in.
15 90 percent.

16 Q. 90 percent?

17 A. Yeah.

18 Q. And you have a master's degree in
19 taxation, correct?

20 A. I do.

21 Q. So I'm hoping you can explain this
22 because I'm terrified of taxes. What -- I'm
23 looking over the Schedule JRW-1 and JRW-2 that was
24 attached to your testimony, and I want to go
25 through this and see --

1 A. My direct?

2 Q. Yes. This is supposed to be the
3 identification of the property and the assessed
4 values, and it gives a description.

5 A. It's very small print, right.

6 Q. Yes, it is.

7 A. Go ahead.

8 Q. I was going to bring a magnifying
9 glass for this. For instance, property
10 description, there's diesel pump equipment 326,
11 electric pump equipment 325, and I'm on
12 Schedule JRW-1 there, mains, hydrants, supply
13 mains, water treatment, things of that nature.

14 A. Yes.

15 Q. Have you looked at and reviewed the
16 Missouri statutes to identify what type of
17 classification that property should be under?

18 A. So if you presume it's under personal
19 property, which --

20 Q. I don't want to presume. I want you
21 to tell me what you think it is under and why.

22 A. Okay. My personal view --

23 Q. Yes.

24 A. -- based on the law --

25 Q. I'm not the tax expert. I don't have

1 **the master's.**

2 A. I believe our property generally
3 should fall into personal property. However, the
4 courts generally don't agree with me. So I have to
5 tell you that that's all over the board across this
6 country.

7 **Q. I'm talking about Missouri statutes,**
8 **and I'm looking specifically, if we can, at the**
9 **definitions 137.010.**

10 A. So if you look at the definitions, it
11 is depends on whether it's on your property or on
12 someone else's property, or if you look at the
13 explanation in the -- so it's actually det-- it's a
14 facts and circumstances determination, and there's
15 a -- if it's pipe or it's attached to a pipe, then
16 there's actually a little -- again, I wish I had
17 the statute. It tells you that it's real property.

18 **Q. Why don't we give you a copy.**

19 MS. SHEMWELL: I have definitions
20 available.

21 MR. ENGLAND: I've got a copy.

22 JUDGE BURTON: Mr. England, you're
23 handing him a copy of the current Section 137.010
24 or what?

25 THE WITNESS: The classification of

1 property.

2 MR. ENGLAND: 122.

3 THE WITNESS: It's before that,
4 because that's just the personal property part.

5 MR. ENGLAND: Then I don't have that.

6 MS. SHEMWELL: I'm handing him a copy
7 of 2017 statute 137.010, definitions.

8 JUDGE BURTON: Ms. Shemwell, why
9 don't you share that real quick with Mr. England so
10 he can review that real quick.

11 MR. ENGLAND: Thank you.

12 THE WITNESS: Real property, and it's
13 in -- it's form 137.010(4), definition of real
14 property, and it includes stationary property used
15 for transportation, storage of liquid and gaseous
16 products, including but not limited to petroleum
17 products, natural gas, propane, LP, water and
18 sewage.

19 BY JUDGE BURTON:

20 Q. So in Missouri-American's opinion,
21 this is considered real property under that
22 definition?

23 A. Yes.

24 Q. And has there been any distinction or
25 difference between Missouri-American's

1 interpretation of that and the 23-odd counties that
2 Missouri-American operates in?

3 A. I've not had those discussions. I
4 only had the discussion with Platte County.

5 Q. Okay. We'll get to that in just a
6 second. Now, you said you haven't had a discussion
7 with any of the other counties. How do the other
8 counties assess this or how do they consider the
9 property that's at issue? And I'm talking
10 specifically about St. Louis County first and the
11 items that you've identified in your Schedule
12 JRW-1.

13 A. I don't know.

14 Q. Don't know. Okay. Does it make any
15 difference or distinction between how the property
16 is defined or considered for a category and class
17 life?

18 A. Yes. From a perspective of the
19 Missouri statute's use of that, yes.

20 Q. And why is that? What does it do?

21 A. All it would do is the statute would
22 be clear if it was personal property that I would
23 go to those MACRS tables and I would pick one based
24 on my filings with the IRS and use that. If it's
25 real property, then it's again not so attractive

1 and I'm going to need guidance from the regulatory
2 body to say that why should one piece of property
3 that falls into that class be valued one way and
4 not another.

5 And again, when you get to that
6 measure, then you also have to worry about --
7 underneath these general principles of property
8 taxation you're worried about making sure that you
9 get the true or fair value, and you're worried
10 about trying to make sure that you're not filing in
11 an indiscriminate way or discriminate way as
12 compared to other taxpayers with similarly situated
13 properties.

14 When you get to the lack of clarity,
15 then you have to go to the regulatory body that's
16 the taxing authority to get that clarification or
17 you look at precedent.

18 **Q. And was that discussion held with any**
19 **of the other counties in Missouri?**

20 **A.** I believe that that's part of the
21 process of creating the format, because again in
22 the other counties you don't have specific format
23 in doing assessments. As I understand through
24 conversations with my team and others preparing
25 these returns is it's a county-by-county

1 conversation.

2 Q. Okay. But you're unaware of any
3 conversation that you've instigated or anyone has
4 instigated on behalf of Missouri-American Water
5 Company with those counties, other than Platte
6 County?

7 A. On this specific matter, no. On the
8 matter of whether it's real or personal or what
9 form, I assume that's again precedent, even filing
10 the forms and the review of the forms and the
11 agreed to the forms. Again, I don't know why you
12 would have a discussion really unless you're having
13 a problem or you're having some discussion or
14 there's a change in court case or change in law,
15 then you have discussion.

16 Q. Okay. So if -- I want to look back
17 at the e-mail that was Schedule 4 for your
18 surrebuttal testimony, and this is the e-mail that
19 is between Karen Leahy from St. Louis County and --

20 A. This is my surrebuttal?

21 Q. Yes.

22 A. Okay.

23 Q. And this is the March 19th, 2007
24 e-mail to Tammy Frost. Can you identify for the
25 record exactly who Tammy Frost is?

1 A. She works for the preparer consultant
2 Jason Sansone. She's the one who's been kind of
3 the administrative person or the tax expert that's
4 been filing these returns in St. Louis County and I
5 think the other one is St. Charles County she also
6 files returns for us.

7 Q. She doesn't do anything with Platte
8 County?

9 A. No.

10 Q. How long has Missouri-American Water
11 Company been using Jason Sansone for its tax
12 assessments?

13 A. I believe at least since 2003, which
14 is all I've been able to kind of confirm.

15 Q. And they still use, as of today,
16 Jason Sansone's company?

17 A. We haven't made a decision on next
18 year. We kind of make that year by year, but yeah,
19 they still --

20 Q. Now, I want to go through this e-mail
21 real quick. It identifies locally assessed
22 personal property items, which under what you just
23 said would go under the MACRS, MACRS system,
24 correct?

25 A. Correct.

1 **Q. And that's what's under the statute**
2 **supposed to be the federal IRS system, correct?**

3 A. Again, the statute again is guidance.
4 It tells the assessor that to get to true value,
5 this is a method that you can utilize. It does
6 open the door for other methods to be used. If you
7 look at the statute, it's not like a you shall use
8 this. It just tells you that this is a method. It
9 also tells the assessor that they have discretion,
10 if they don't feel that gets them to true value, to
11 do something different.

12 **Q. Well, I want to know why it is, then,**
13 **in there is an issue of this being assessed**
14 **personal property items when we're talking about**
15 **2006 items, why Missouri-American decided that this**
16 **should continue straight through to 2017 when it**
17 **submitted its filings for this year?**

18 A. Again, I can't answer what people's
19 thought process were throughout the whole period of
20 time.

21 **Q. Do you review Mrs. Frost's files? Do**
22 **you get a copy of those?**

23 A. I did after the fact. I did not
24 review them before they were filed, no.

25 **Q. So you didn't get them for 2016?**

1 A. No.

2 Q. Did you review any notes for anyone
3 who was your predecessor and their conversations
4 with Ms. Frost prior to your filing?

5 A. I did look for those just to make
6 sure I could understand what happened. I did not
7 see anything.

8 Q. You did not see anything that alerted
9 you to what happened?

10 A. Yeah. There's nothing -- again,
11 nothing more than what I see here in these e-mails.
12 We looked. We didn't find anything.

13 Q. Now, you just mentioned, I believe,
14 that it's up to the assessors to make the decisions
15 on those. Is it normal for an assessor not to
16 change anything from 2007 to 2017, for ten years?

17 A. With respect to how they're going
18 about valuing the property?

19 Q. Uh-huh.

20 A. It's very unusual for them to make
21 such a large change. I mean --

22 Q. Is it unusual for them to not make
23 any changes for ten years?

24 A. I would say they all made slight
25 changes in -- as part of their transitions.

1 They've all made slight changes in the methods.

2 Q. And by all you mean all 23 counties?

3 A. I can't say all. I mean, I would say
4 that, based on the conversations with Tammy and
5 what she says in her e-mail and the other thing she
6 said, that that was going on.

7 Q. Have you reviewed the statutes in
8 Chapter 137 before coming here today or before
9 preparing your testimony?

10 A. Yeah, I read through them.

11 Q. Okay. I want to go to
12 Section 137.122, and I'm just going to read for you
13 under, I believe it is subsection 5. This section
14 shall not apply to business personal property
15 placed in service before January 2nd, 2006.
16 Nothing in this section shall create a presumption
17 as to the proper method of determining the assessed
18 valuation of business personal property placed in
19 service before January 2nd, 2006.

20 Do you think it's plausible that this
21 subsection had anything to do with the description
22 in this e-mail from Karen Leahy to Ms. Frost as far
23 as I see no reason why the '06 acquisition
24 shouldn't be depreciated using the new recovery
25 schedule?

1 A. Yeah. I'm not -- I wouldn't be privy
2 to that conversation or that thought. I don't
3 know. I mean, I would think it's plausible, yes.

4 Q. Are you aware of how many customers
5 in Missouri Missouri-American currently has?

6 A. No, I am not.

7 Q. Did you have any discussion with
8 anyone at Missouri-American Water Company about, in
9 your opinion, challenging this assessment by
10 St. Louis County?

11 A. We went through a process of looking
12 at whether there was grounds for St. Louis County
13 to assess. Again, you'd have to -- the challenge
14 has to be based on is their method arriving at a
15 reasonable basis for true value given that the
16 taxpayer has the burden of proof to prove
17 otherwise.

18 Once the assessor establishes a
19 method and interprets the statute and applies it,
20 then the burden of proof falls to the taxpayer. So
21 did we -- did we look and see whether there was a
22 point to challenge on value? Yes, but given all
23 the facts and circumstances, we felt there wasn't.

24 The other thing that we questioned
25 was discrimination, and we haven't fully looked at

1 that. We asked some questions. Obviously
2 Laclede's the other gas company within that
3 jurisdiction. But again, there's other taxpayers
4 with similar property besides utilities, and you
5 would question why they might be -- for example, if
6 a factory had water treatment facilities within it,
7 are they using a seven-year life for their
8 property?

9 So there's other things that we could
10 look at. We don't see them -- we don't see
11 St. Louis as being -- discriminating against us
12 with respect to that.

13 **Q. So on page 4 of your surrebuttal**
14 **where you say that you're still evaluating the**
15 **St. Louis County assessments mainly to determine if**
16 **St. Louis County is applying recovery periods**
17 **consistently to all like kinds of property**
18 **assessed, that's what you mean?**

19 A. That's what I'm implying, yes.

20 **Q. No other actions?**

21 A. No other actions.

22 **Q. And do you know what the status is as**
23 **far as Missouri-American's challenge of the**
24 **decision with Missouri State Tax Commission for**
25 **Platte County?**

1 A. The decision for Platte County was at
2 the local board of assessment.

3 **Q. Equalization?**

4 A. Yeah. And so we've protested to the
5 State Tax Commission. We have a hearing with the
6 other parties to kind of go through the case on the
7 28th of November, and then at that point we
8 probably will be set either -- we set a pending
9 trial date or hearing date, and then -- or it could
10 be stayed given other actions within the Tax
11 Commission.

12 JUDGE BURTON: Okay. Thank you. I
13 don't have any further questions. Any recross
14 based off of questions from the Bench?

15 MR. FOX: No, your Honor.

16 JUDGE BURTON: OPC? Staff?

17 MS. MERS: Just a few clarifications.

18 RE CROSS-EXAMINATION BY MS. MERS:

19 **Q. You stated in response to Judge**
20 **Burton's question that you didn't review**
21 **Ms. Frost's work for 2016; is that correct?**

22 A. Before it was filed.

23 **Q. Before it was filed. Does anybody**
24 **from Missouri-American review Ms. Frost's or any of**
25 **the other tax consultants' work before it's filed?**

1 A. The person mentioned in the e-mail
2 conversation going back, there's both a -- there's
3 two people mentioned. He goes by the name of
4 Morris. He's a staff person that actually does a
5 lot of the other preparations in the other
6 counties. He reviews their work. And then
7 Ms. Elizabeth Arriaga, and she reviews his work.
8 She's a manager of that general tax group.

9 **Q. And they're both Missouri-American**
10 **employees?**

11 A. They're employees of the Services
12 Company.

13 **Q. Okay. Services Company. Now, you**
14 **also discussed that sometimes you need guidance**
15 **from the taxing authorities. Does Ms. Frost or is**
16 **it the consultants that unilaterally decides if**
17 **guidance is needed or does Missouri-American step**
18 **in and get involved to decide if there's guidance**
19 **needed or clarification needed on taxing issues?**

20 A. It would be kind of a both kind of
21 question. I mean, so it -- I would say that
22 Ms. Frost is clear to go to the county and ask for
23 advice, and you can see that she does interact
24 directly with the county. And you'll see that at
25 times my team, which is Liz and Morris, go to the

1 county and get clarification. And if it's elevated
2 to myself, then I might seek additional guidance.

3 Q. It sounds like that you, from your
4 conversation with Judge Burton, have not, except
5 for maybe Platte County, have not yourself sought
6 guidance. So is it often elevated to you or not so
7 often elevated to you?

8 A. Property tax declarations, no.

9 MS. MERS: Okay. I have nothing
10 further. Thank you.

11 MR. FOX: Your Honor?

12 JUDGE BURTON: Mr. Fox.

13 MR. FOX: Thank you.

14 RECROSS-EXAMINATION BY MR. FOX:

15 Q. Mr. Wilde, where does Sansone get its
16 information for the water company assets?

17 A. The listing of assets and original
18 cost is provided by my team, again Liz and Morris,
19 using our plant group or accounting group, and it
20 comes out of our power tax or power plant reporting
21 system, which is a fixed asset ledger and property
22 tax reporting system.

23 MR. FOX: Thank you.

24 JUDGE BURTON: Mr. Woodsmall?

25 MR. WOODSMALL: No questions.

1 JUDGE BURTON: Missouri-American
2 Water Company?

3 MR. ENGLAND: May I ask the redirect
4 from here?

5 JUDGE BURTON: You may.

6 MR. ENGLAND: Thank you.

7 REDIRECT EXAMINATION BY MR. ENGLAND:

8 Q. Mr. Wilde, starting with the e-mail
9 that's attached to your surrebuttal testimony,
10 Schedule 4, the exchange between -- the 2007
11 exchange between Karen Leahy and Tammy Frost.

12 A. Yes.

13 Q. What was the date of that exchange?

14 A. March 19, 2007.

15 Q. Would that have been before Ms. Frost
16 filed the property tax declaration for that year?

17 A. I can't be certain. There's
18 generally extensions provided. I think the date,
19 the actual original due date might have been just
20 before that, and then extensions are typically
21 granted and they're filed in April.

22 Q. I guess regardless of when it was
23 filed, have you gone back and reviewed that filing
24 for 2007?

25 A. I have looked at that filing, yes.

1 Q. And what MACRS class life was used
2 for purposes of that filing?

3 A. It was using a seven-year recovery
4 period.

5 Q. And your review of the record, does
6 it reflect any objection or rejection by St. Louis
7 County?

8 A. I can find no discussion debating any
9 filing prior to the May of 2017 correspondence.

10 Q. With respect to the questions from
11 Commissioner Kenney on depreciation, for purposes
12 of property tax reporting, is the property ever
13 depreciated to zero?

14 A. No, it's not. It has a residual
15 value in all these tables. So the tables are
16 modified by all the counties based on what the
17 statute says and in Platte County what the assessor
18 determined was the residual value.

19 Q. Would that be different than how
20 depreciation is done for other purposes?

21 A. Absolutely, yes.

22 Q. With respect to Staff Data Request
23 No. 3, which I think is marked as Exhibit No. 3,
24 and the answer regarding the 23 other counties and
25 their class lives, do you have that in front of

1 you?

2 A. Did she give me -- I've got it.

3 Sure. I have it.

4 Q. Did all of those counties move to the
5 20-year class life in the 2007 time or '08 time
6 frame?

7 A. My understanding is they all
8 transitioned over periods of time.

9 Q. Were some of them late in the
10 process, if you will?

11 A. According to the e-mail from Tammy
12 Frost that we've been talking about, it said that
13 Jefferson County just did it two years ago.

14 Q. In your opinion, then, there's no
15 hard and fast date by when the assessors were to
16 have moved to a 20-year MACRS class life recovery
17 period?

18 A. Not based on the practice, no.

19 MR. ENGLAND: Thank you, sir. I have
20 no other questions.

21 JUDGE BURTON: Okay. You're excused.
22 Mr. England, you may call your next witness.

23 MR. ENGLAND: Thank you. We would
24 call Mr. Brian LaGrand.

25 MR. WOODSMALL: Your Honor, I have a

1 brief due in Iowa. May I be excused for the rest
2 of this hearing?

3 JUDGE BURTON: Yes.

4 MR. WOODSMALL: Thank you. Though
5 I'd rather be here. Thank you.

6 (Witness sworn.)

7 JUDGE BURTON: You may be seated.

8 MR. ENGLAND: Your Honor, we have two
9 pieces of testimony, the direct testimony of Brian
10 LaGrand and the surrebuttal testimony of Brian
11 LaGrand, and if I'm keeping track of exhibits
12 correctly, I think they would be 4 and 5.

13 JUDGE BURTON: Yes.

14 (EXHIBITS 4 AND 5 WERE MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BRIAN LAGRAN testifies as follows:

17 DIRECT EXAMINATION BY MR. ENGLAND:

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

20 A. Yes. Brian W. LaGrand.

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

23 A. By Missouri-American Water. I'm the
24 Director of Rates for Missouri.

25 Q. And, Mr. LaGrand, have you caused to

1 be prepared and filed in this case what has been
2 marked for purposes of identification as Exhibit
3 No. 4, your direct testimony?

4 A. Yes, I have.

5 Q. With respect to that testimony, do
6 you have any corrections or changes that need to be
7 made?

8 A. Yes. There are two, and these I
9 believe were communicated to counsel and the other
10 parties prior to the filing of rebuttal testimony.
11 The first one is on page 6, line 16. The word
12 replacements should be struck and replaced with the
13 word taxes.

14 And the second change is on page 7,
15 line 19. After the case number there should be a
16 period and everything on the remainder of line 19
17 and all of line 20 should be struck.

18 Q. Thank you. Mr. LaGrand, did you
19 prepare or have this prepared under your
20 supervision?

21 A. I did.

22 Q. And if I were to ask you the
23 questions that appear in your prepared direct
24 testimony, would your answers here today under oath
25 be the same?

1 A. Yes, they would.

2 Q. With the corrections that you've
3 noted?

4 A. Yes, with the corrections.

5 Q. Let me turn your attention now to
6 Exhibit No. 5, which I believe is your surrebuttal
7 testimony. Do you have that in front of you?

8 A. I do.

9 Q. Did you cause that to be prepared?

10 A. Yes, I did.

11 Q. And do you have any corrections or
12 changes that need to be made?

13 A. No, no changes to the surrebuttal.

14 Q. So if I were to ask you the questions
15 that appear in that testimony here today under
16 oath, your answers would be the same?

17 A. Yes.

18 Q. Thank you.

19 MR. ENGLAND: I have no other
20 questions of the witness and, subject to
21 cross-examination, would tender Exhibits 4 and 5,
22 please.

23 JUDGE BURTON: Exhibit 4 and
24 Exhibit 5 have been offered. Are there any
25 objections?

1 (No response.)

2 JUDGE BURTON: Seeing none,

3 Exhibits 4 and 5 are admitted.

4 (EXHIBITS 4 AND 5 WERE RECEIVED INTO
5 EVIDENCE.)

6 MR. ENGLAND: Thank you, your Honor.

7 JUDGE BURTON: And with Mr. Woodsmall
8 excused, I believe that leaves us with Mr. Fox to
9 start the cross-examination.

10 CROSS-EXAMINATION BY MR. FOX:

11 Q. Mr. LaGrand, you deal with the rates
12 that the water company I guess uses with particular
13 counties?

14 A. Well, I'm responsible for the
15 customer rates for utility service. Nothing to do
16 with the tax rates. I wasn't sure which rates you
17 were referring to.

18 Q. Okay. Are you familiar with any
19 discussion with St. Louis County concerning again
20 the seven-year recovery period to transition to the
21 20-year recovery period?

22 A. I'm only familiar with the extent
23 I've had discussions with Mr. Wilde.

24 Q. Okay. So in your discussions with
25 Mr. Wilde, anything talked about regarding the

1 transition period with St. Louis County?

2 A. Are you talking about the transition
3 period for the lower --

4 Q. For the seven-year recovery period
5 being transitioned to the 20-year.

6 A. Are you asking about the agreement
7 for the 2017 taxes?

8 Q. No, I'm not talking about --

9 A. I'm sorry. I thought that's what you
10 meant by transition. Excuse me.

11 Q. You said that it's been discussed by
12 Mr. Wilde that these have been transitioned with
13 the 23 other counties, they've been transitioning.
14 Are you aware of the transitioning going on with
15 the 23 counties?

16 A. No, I'm not.

17 Q. Okay. And so you're not familiar
18 with any type of transitioning going with the
19 county other than what's been done for 2017?

20 A. Correct.

21 Q. To the best of your knowledge, has
22 the water company ever told, prior to 2017, to
23 St. Louis County that we're using the seven-year
24 recovery period despite the fact that we are to be
25 using the 20-year recovery period?

1 A. I don't know what conversations have
2 taken place.

3 Q. Okay. So you're not -- you certainly
4 haven't had any conversation to that effect?

5 A. No. I've never had conversation with
6 St. Louis County on this matter.

7 Q. Let me ask you this: I think Judge
8 Burton asked, is it usual for an assessor in a
9 county not to make changes over a period of time
10 considering that the changes that could have been
11 made, for instance, with the -- with the 20-year
12 period from 2007 or 2008 to the present, that the
13 assessor of St. Louis County didn't again make any
14 changes.

15 A. Well, I'm not a tax professional, so
16 I wouldn't have any basis for knowing if that is
17 common or uncommon.

18 Q. Okay. Does the current rate case
19 include the use of the 20-year recovery period?

20 A. You're referring to the rate case
21 that's currently pending?

22 Q. That's correct.

23 A. Yes. When putting our projected
24 property tax expenses, we've used the amount that
25 was discussed using the 20-year assessment or

1 the -- yeah, the 20-year methodology.

2 Q. Do all the taxes get passed on to the
3 consumer?

4 A. Yes. When there is a rate case,
5 there is a -- yeah, there's an annualized amount of
6 taxes that are included in the rates the customers
7 pay, and those rates will -- the amount of taxes
8 included in the rate case will reflect what is
9 being paid by the company. So to the extent there
10 are increases, those would be passed to the
11 customer.

12 Q. If the water company had been using
13 the 20-year period of recovery in a consistent
14 manner since 2007 or 2008, the water company
15 wouldn't be facing the tax problem it's facing
16 today with St. Louis County, correct? It would
17 have an increase, but it wouldn't be facing the
18 same problem?

19 A. If the change had been made in 2007
20 as opposed to 2017, yeah, we would not have this
21 extraordinary change that we're facing right now.

22 Q. But the thing is, this was again what
23 was on the books and in the statute since 2007.
24 This is something again in Exhibit 3 -- you've seen
25 Exhibit 3, haven't you, the e-mail from Tammy

1 Leahy -- Tammy Frost to the water company person
2 saying we've had these discussions and the impact
3 that this will have due to St. Louis County again
4 going to the 20-year?

5 A. I've seen the e-mail, but I'm not
6 familiar with the statutes. I'm not a lawyer, so
7 I've not reviewed those.

8 Q. You're lucky. Regarding your
9 statement, you indicate that the sole beneficiary
10 of this tax rate using the seven-year recovery
11 period, the sole beneficiary is the consumer. How
12 do you come to that conclusion?

13 A. Well, to the extent that the property
14 taxes are a pass through, if the company has a
15 higher tax rate or a lower tax rate, those taxes
16 would eventually be passed on to the customer. So
17 if the -- if property taxes are assessed at a lower
18 level, the company doesn't benefit from that. The
19 customer benefits from that via lower water rates.

20 Q. Now, as far as, again, the water
21 company is a publicly held company, correct?

22 A. Missouri --

23 Q. Right.

24 A. No, Missouri-American Water is not a
25 publicly trade company.

1 Q. Does it have shareholders?

2 A. Yes.

3 Q. Okay. And the thing is, if the taxes
4 are lower, okay, it affects the net income of that
5 company, correct, the earnings?

6 A. Yes. All else being equal, yes.

7 Q. So then in effect it's more
8 profitable if it's paying less taxes, correct?

9 A. Perhaps temporarily, but it will
10 eventually flow into the -- flow to the ratepayers
11 via lower rates.

12 Q. Okay. But then with again the paying
13 less taxes, you are -- then the money's being
14 collected for the particular taxing authorities,
15 school districts, special school district, park
16 districts, fire districts, their budgets are
17 affected by the less taxes being collected,
18 correct?

19 A. I'm not familiar with how counties
20 distribute their property taxes, so I can't say one
21 way or the other.

22 Q. But if there's less money being
23 collected, less money's then being distributed to
24 them for their use of services to the consumer
25 of -- or the residents of St. Louis County who

1 **happen to be the consumer of the water company,**
2 **correct?**

3 MR. ENGLAND: Objection, your Honor.
4 The witness has indicated that he doesn't know how
5 the money's distributed by the property taxing
6 entity to the various recipients. So he doesn't
7 know whether they're getting more or less under
8 certain circumstances.

9 JUDGE BURTON: The witness can state
10 that himself. I'll overrule that objection.

11 THE WITNESS: As stated, I don't know
12 how counties distribute those funds, so I don't
13 know that I can say.

14 BY MR. FOX:

15 Q. **If they're collecting less money to**
16 **be distributed to the taxing authorities, that**
17 **affects again the services being provided because**
18 **there's less money to cover the expenses, correct?**

19 A. Well, if -- if lower collections from
20 one taxpayer aren't offset by higher collections
21 from another taxpayer, then that would I guess be
22 the case, yes.

23 Q. **Okay. So then, in effect, the**
24 **consumer of the water company becomes, as a**
25 **resident of St. Louis County, now becomes paying**

1 **for the loss of services, correct, because the tax**
2 **rates change?**

3 A. I'm not sure -- I'm not sure that I
4 agree necessarily.

5 Q. **Okay. You mean you don't disagree**
6 **necessarily?**

7 A. Well, as I've stated, lower property
8 taxes would result in lower water utility bills.
9 To the extent there's less revenue coming to a
10 particular county and the extent that results in
11 lower distributions to other governmental entities
12 within that county, yeah, those entities may have
13 to look for funding elsewhere. I have no basis for
14 knowing what those -- what impacts that would have.

15 MR. FOX: Okay. No further
16 questions, your Honor.

17 JUDGE BURTON: Ms. Mers?

18 CROSS-EXAMINATION MS. MERS:

19 Q. **Mr. LaGrand, if the Commission did**
20 **not rule on this AAO, could Missouri-American book**
21 **a regulatory asset for financial reporting?**

22 A. I think management would have to make
23 a decision about if they feel it is -- that
24 recovery would be probable.

25 MS. MERS: Thank you.

1 JUDGE BURTON: Public Counsel?

2 CROSS-EXAMINATION BY MS. SHEMWELL:

3 Q. Mr. LaGrand, I'm Lera Shemwell. I
4 represent the Office of the Public Counsel.

5 A. Good morning.

6 Q. Good morning. Are you familiar with
7 Chapter 137 of the Missouri statutes?

8 A. No, I don't believe so.

9 Q. You don't know them at all or --

10 A. Can you tell me what 137 is?

11 Q. 137 addresses taxes.

12 A. No, I'm not -- I've not read them.
13 I'm not familiar.

14 Q. Do you know if the company is
15 responsible to correctly file and identify its real
16 property and tangible personal property in its
17 property declarations in all 24 counties?

18 A. If that's a term in the statute, I
19 don't -- I'm not familiar with the statute, so I
20 don't know --

21 Q. Well, my question was --

22 A. -- for sure one way or the other.

23 Q. I'm sorry. I didn't mean to talk
24 over you.

25 A. That's okay.

1 Q. Generally, are you responsible to
2 correctly report your taxes in the counties in
3 which you operate?

4 A. I would assume so.

5 Q. When you file your taxes to the IRS,
6 are you responsible to file them correctly and
7 accurately?

8 A. You're talking about my personal
9 taxes?

10 Q. I was talking about the company's
11 taxes, but personal taxes.

12 A. I don't prepare the company's taxes,
13 but yes. I don't know what it says in the statute,
14 but it's reasonable to assume that we would be
15 expected to file things correctly.

16 Q. Currently, the company is, at least
17 in 23 counties in which it operates, reporting the
18 distribution assets with a 20-year life?

19 A. That's my understating.

20 Q. Using the 20-year life results in
21 higher taxes than seven-year life?

22 A. That's correct.

23 Q. You're involved in the current rate
24 case for Missouri-American?

25 A. Yes, ma'am.

1 Q. You agree that the matching principle
2 is a common consideration in ratemaking?

3 A. In ratemaking, yes.

4 Q. Are you appealing the Platte County
5 assessor's decision?

6 A. Well, I would refer back to the
7 answer Mr. Wilde gave. I'm not familiar with the
8 details of what we are or not appealing.

9 Q. So you don't know if you're appealing
10 the St. Louis County decision?

11 A. Again, I only know as Mr. Wilde
12 stated what we're doing. I'm not personally
13 involved in that decision.

14 Q. In your testimony you discuss the MGE
15 AAO for Kansas property taxes, correct?

16 A. Yes. It's in my direct or
17 surrebuttal. I can't remember.

18 Q. It's page 10 of your surrebuttal.

19 A. Okay.

20 Q. The MGE case involved taxes on gas in
21 storage in Kansas?

22 A. Yes, that's my understanding.

23 Q. And Kansas was instituting a
24 completely new tax in that case?

25 A. That's also my understanding, yes.

1 Q. Do you know the extent to which MGE
2 appealed the Kansas tax?

3 A. See if I -- I don't know all the
4 details to the extent that they appealed. I mean,
5 I know they did appeal. I don't know the
6 specifics.

7 Q. Okay. Thank you. And the Commission
8 did consider that AAO under those circumstances,
9 that it was a new tax in Kansas?

10 A. I believe so.

11 Q. Do you believe the company is
12 required to get preauthorization to record this as
13 a regulatory asset in the NARUC's USOA?

14 A. Preauthorization from the Commission?

15 Q. Yes.

16 A. No, I don't believe so.

17 Q. So you can book a deferred debit
18 without obtaining Commission authorization as well?

19 A. Yes. There's a variety of factors
20 that work into that. There's not a requirement
21 that the Commission provide.

22 Q. Okay. And I'm correct in
23 interpreting the changes that you've made today
24 that you're no longer seeking a regulatory asset?

25 A. We are simply seeking for the

1 Commission to authorize the company to defer in
2 Account 186, which is deferred debit account, these
3 incremental additional taxes related to what we
4 believe is an extraordinary change in the
5 assessment methodology from St. Louis County. So
6 we're not asking for any regulatory treatment, just
7 simply for it to be -- for it to be deferred for
8 consideration more fully in the pending rate case.

9 **Q. In your testimony you give a**
10 **definition of extraordinary.**

11 A. Uh-huh.

12 **Q. What's the basis for that definition?**

13 A. Let me just find where I -- I'm not
14 sure if it's direct or the surrebuttal. Let me
15 find it real quick. Okay. I believe I see at
16 least one spot where I defined it on page 5 of the
17 surrebuttal.

18 **Q. Yes.**

19 A. Can you restate your question again?

20 **Q. Yes. What is the basis for that**
21 **definition?**

22 A. You mean is it in like a statute or a
23 ruling or something somewhere, is that --

24 **Q. Yes, or a -- yes, a case ruling.**

25 A. Well, I think a lot of these are what

1 I would believe to be a common definition of
2 extraordinary, things that are, you know, sudden,
3 dramatic changes, fundamental changes as the one
4 we're talking about here by definition would be
5 extraordinary.

6 **Q. So a fundamental change is what**
7 **you're considering extraordinary?**

8 A. Well, the way we describe it here, a
9 sudden, dramatic, I believe if I quote from my
10 testimony, the actions by the counties in question
11 to alter their tax assessment methodologies
12 represent dramatic, sudden, one-time foundational
13 shifts from how the counties have historically
14 calculated the company's tax assessment.

15 **Q. The Platte County situation is quite**
16 **different from St. Louis County, right? In Platte**
17 **County they are proposing something completely new?**

18 A. Yeah. They're proposing a 50-year
19 MACRS life.

20 **Q. For real property?**

21 A. I don't know that I know the
22 specifics enough to say whether it's real or
23 personal. I don't want to misstate the facts.

24 MS. SHEMWELL: I have no further
25 questions. Thank you, sir.

1 COMMISSIONER STOLL: No questions.

2 QUESTIONS BY COMMISSIONER KENNEY:

3 Q. Good morning.

4 A. Good morning.

5 Q. I just have one question.

6 A. Sure.

7 Q. Because counsel for St. Louis County
8 was talking about the 2007 date dealing with the
9 e-mail exchange.

10 A. Yes.

11 Q. If the company would have changed
12 their depreciation schedule from seven years to 20
13 years in 2007 or 2010 or 2013 or 2017, unless that
14 change coincided with a rate case and new rates go
15 into place, the company would have always been held
16 at a loss unless the Commission granted like an AAO
17 or something; is that correct?

18 A. Yes, that's true.

19 Q. So whenever you change, you'd
20 always -- it would have always been a loss, I mean,
21 until new rates go into effect to cover that?

22 A. Yes. Yeah.

23 COMMISSIONER KENNEY: Thank you.

24 QUESTIONS BY JUDGE BURTON:

25 Q. I just have some quick questions for

1 you. Are you familiar with Elizabeth Arriaga,
2 A-r-r-i-a-g-a?

3 A. Yes, I know her.

4 Q. And do you know where she currently
5 works?

6 A. Yes. So she's an employee of
7 American Water Service Company, and she's located
8 in New Jersey.

9 Q. She currently is employed, though,
10 with the company?

11 A. Last I heard, yes.

12 Q. I didn't know if you were aware of
13 any communication or correspondence that she might
14 have had in response to the communication from
15 Ms. Frost or what Missouri-American Water Company's
16 position was as far as the revisions for St. Louis
17 County.

18 A. The only communications I'm aware of
19 are the ones that have been attached as testimony
20 exhibits.

21 Q. Did you review any of those that were
22 submitted by St. Louis County as their exhibits
23 before coming here today?

24 A. Yes.

25 Q. Okay. Did you review any of the

1 e-mails with Ms. Frost that were either admitted
2 here or offered as attachments to testimony or not?

3 A. Yes. I mean, I read through them. I
4 wouldn't say I studied them, but I did read through
5 them, yes.

6 Q. Was there ever a discussion about
7 challenging St. Louis County's assessment for these
8 personal property taxes?

9 A. I mean, I believe it was talked --

10 Q. Prior to -- let me just say, prior
11 to --

12 A. Yes.

13 Q. -- prior to this e-mail on around,
14 what is it, May 30th or June 7th of this year?

15 A. My understanding is that's when we
16 were first notified about this change. So I don't
17 know -- to the extent there were or were not
18 conversations prior to that date, I'm not -- I'm
19 not aware one way or the other.

20 Q. Now, as far as the property in Platte
21 County that is the CWIP, C-W-I-P portions?

22 A. Yes.

23 Q. Do you know what that total is that's
24 in dispute here that Missouri-American Water
25 Company is requesting be considered in the AAO?

1 A. The total amount of the CWIP or the
2 total amount of the taxes that would result from
3 that, from applying it?

4 **Q. Both.**

5 A. I don't know the exact amount of the
6 CWIP, but I know it's significant because that's
7 where our Parkville water treatment plant that's
8 under construction that will be placed in service
9 by the end of this year, so probably in the
10 neighborhood of \$30 million, plus or minus a little
11 bit around that number.

12 **Q. For 2017?**

13 A. Yes.

14 **Q. Or is this going forward? Is this --**

15 A. No. This will be the CWIP balance
16 today.

17 **Q. Okay.**

18 A. Somewhere in that neighborhood of
19 \$30 million. And then the additional taxes that
20 are being discussed with the AAO that relate to
21 Parkville -- excuse me, to Platte County, it's
22 about \$400,000 for calendar year 2017 and calendar
23 year 2018.

24 **Q. Combined?**

25 A. Combined. But as far as the AAO, and

1 let me just refer to my attachment to my testimony,
2 it's about \$167,000 at issue here because we're
3 only considering May -- or 2018 through May.

4 **Q. And the company hasn't paid any of**
5 **the taxes yet, or have they, to St. Louis County or**
6 **to Platte County for 2017?**

7 A. I don't believe so. I believe the
8 bills are issued, they're probably coming out
9 around this time of year and I think would be
10 expected to be paid before the end of the year.

11 **Q. December 31st of this year?**

12 A. Yes, the end of 2017, is my
13 understanding.

14 JUDGE BURTON: Okay. Those are the
15 only questions that I have.

16 THE WITNESS: Okay.

17 JUDGE BURTON: Any recross?

18 MS. SHEMWELL: Yes, please.

19 RECROSS-EXAMINATION BY MS. SHEMWELL:

20 **Q. So you haven't incurred any of these**
21 **expenses yet?**

22 A. We've not written the check for the
23 taxes, no.

24 MS. SHEMWELL: Thank you.

25 JUDGE BURTON: Staff?

1 MS. MERS: No, thank you.

2 JUDGE BURTON: St. Louis County?

3 MR. FOX: No, your Honor.

4 JUDGE BURTON: Any redirect?

5 MR. ENGLAND: Briefly, your Honor.

6 REDIRECT EXAMINATION BY MR. ENGLAND:

7 Q. With respect to the payment of the
8 bill at the end of the year, what will that be, I
9 guess, giving consideration to this increase in
10 St. Louis County as well as Platte County?

11 A. My understanding is the anticipated
12 or the estimated amount for St. Louis County that
13 we would pay in 2017 would be \$4.4 million.

14 Q. In addition to what you had budgeted
15 for?

16 A. Yes. I'm sorry. 4.4 million
17 incremental of the new assessment. In total, I
18 don't have the St. Louis County number in front of
19 me, but I believe for 2016 the company in total
20 paid about approximately \$14 million in property
21 taxes for all the counties across the state.

22 Q. So this 4.4 million you're talking
23 about would be in addition to roughly the
24 14 million you expect to pay in 2017; is that
25 right?

1 A. Yes, that's correct. Plus, I'm
2 sorry, there would be additional taxes due to
3 investments that we made throughout the year given
4 kind of the normal course of business activity.

5 Q. If the Commission grants the AAO that
6 you seek in this case, would the exact amount be
7 trued up based on your payment at the end of the
8 year?

9 A. Yes.

10 Q. The deferred amount would be trued up
11 based on --

12 A. Yes, absolutely.

13 MR. ENGLAND: Thank you, sir. I have
14 no other questions.

15 JUDGE BURTON: You may be excused.
16 Thank you.

17 It's currently 10:58. Why don't we
18 take a very quick ten-minute recess and come back
19 at 11:10.

20 (A BREAK WAS TAKEN.)

21 JUDGE BURTON: I believe that, Staff,
22 you are up next to represent your witness.

23 MS. MERS: Staff calls Mark
24 Oligschlaeger to the stand.

25 (Witness sworn.)

1 JUDGE BURTON: You may be seated.

2 MARK OLIGSCHLAEGER testified as follows:

3 DIRECT EXAMINATION BY MS. MERS:

4 Q. Can you please state and spell your
5 name for the record.

6 A. Yes. Mark L. Oligschlaeger,
7 O-l-i-g-s-c-h-l-a-e-g-e-r.

8 Q. And by whom are you employed and in
9 what capacity?

10 A. I'm employed by the Missouri Public
11 Service Commission as manager of the auditing
12 department.

13 Q. And did you prepare testimony, I
14 believe it will be marked Exhibit 6 and 7, in this
15 proceeding?

16 A. I did.

17 Q. Do you have any corrections to that
18 testimony?

19 A. I do not.

20 Q. Is it true to the best of your
21 knowledge and belief?

22 A. It is.

23 Q. And if I asked you the same questions
24 today, would your answers be the same?

25 A. They would.

1 MS. MERS: I would like to enter
2 Exhibits 6 and 7 into the record and tender the
3 witness for cross.

4 JUDGE BURTON: Are there any
5 objections to --

6 MR. ENGLAND: No objections.

7 JUDGE BURTON: -- the admission of
8 Staff's Exhibits 6 and 7, which is
9 Mr. Oligschlaeger's rebuttal and surrebuttal?

10 MR. SMITH: No objections.

11 JUDGE BURTON: Seeing none,
12 Exhibits 6 and 7 are admitted.

13 (EXHIBITS 6 AND 7 WERE RECEIVED INTO
14 EVIDENCE.)

15 JUDGE BURTON: I believe St. Louis
16 County, Mr. Fox, you are next for questions.

17 MR. FOX: On page 7 -- never mind. I
18 don't have any questions. I do not have any
19 questions.

20 JUDGE BURTON: Okay. Ms. Shemwell or
21 Mr. Smith?

22 MR. SMITH: Yes.

23 CROSS-EXAMINATION BY MR. SMITH:

24 Q. Good morning.

25 A. Good morning.

1 Q. Mark, to your knowledge, can a
2 utility chain together multiple events to meet the
3 materiality threshold?

4 A. Only under certain circumstances,
5 namely that the chain of events be basically
6 occurring from a single plan of action. I'll leave
7 it at that.

8 Q. And, Mr. Oligschlaeger, was such a
9 single plan of action present in this case that
10 would chain together the events in Platte County
11 with the events in St. Louis County?

12 A. Not to my knowledge.

13 Q. In reading through your testimony
14 here, I'll make sure I'm referring to the right
15 one, if it's rebuttal or surrebuttal, but it's
16 page 8, lines 8 through 11. I think it would be
17 your rebuttal.

18 A. I'm there.

19 Q. All right. And I read that to say
20 that Staff views these actions taken -- I guess
21 maybe it would be better just to have you read that
22 into the record.

23 A. Sure.

24 MR. ENGLAND: Objection, your Honor.
25 It's already in the record.

1 JUDGE BURTON: Mr. Smith, unless
2 you're looking for some clarification...

3 MR. SMITH: Okay. Well, I was going
4 to ask him to build on that statement, and I agree
5 it is already in the record, so I'll withdraw that
6 question.

7 BY MR. SMITH:

8 Q. But to build on that, there's further
9 discussion of extraordinary in your testimony;
10 isn't that true?

11 A. I believe at places I address the
12 concept of extraordinary items, yes.

13 Q. And in your experience, does the term
14 extraordinary contemplate nonrecurring, something
15 that's nonrecurring?

16 A. Among other things, yes.

17 Q. And would property taxes be the sort
18 of things that would be recurring events?

19 A. Payment -- assessment and payment of
20 property taxes are annual recurring events for
21 utilities, yes.

22 Q. Do you recall a Case GU-2014-0032?
23 It involved Summit Natural Gas and an application
24 for Accounting Authority Order that was ultimately
25 dismissed.

1 A. I have to admit it's not ringing any
2 bells.

3 Q. Okay. Well, I won't go further into
4 that, then.

5 I guess moving on from that, have you
6 had the opportunity to read Staff's Statement of
7 Positions?

8 A. I did.

9 Q. And if you -- do you have that with
10 you?

11 A. I do.

12 Q. Okay. Just let me know when you've
13 got it.

14 A. I have it.

15 Q. All right. Would you go to the third
16 issue.

17 A. I'm there.

18 Q. And I'd like to get some
19 clarification. Is what is presented here a change
20 in Staff's position from what was filed in your
21 testimony?

22 A. I'm not aware that this is
23 inconsistent with anything in my testimony.

24 Q. Is Staff still -- does Staff still
25 believe or do you still believe that a regulatory

1 **asset is the correct way for which the Commission**
2 **should grant the company's request?**

3 A. If you're asking whether the
4 Commission should grant a regulatory asset in this
5 case, if they otherwise see that course of action
6 as appropriate, I see no problem with the use of
7 the term regulatory asset in that context.

8 Q. Based on the position statement,
9 then, is Staff suggesting to the Commission that
10 the Commission should, if they were to grant the
11 AAO, to create the regulatory asset, or instead is
12 Staff recommending to the Commission, if the
13 Commission were to grant this AAO, that they book
14 it as a deferred debit in Account 186?

15 A. Again, the terminology can be
16 confusing, and at least in my mind a regulatory
17 asset is one subcategory of potential deferred
18 debits. For electric and gas utilities, there's a
19 specific account to book regulatory assets to. In
20 the water and sewer context if the Commission
21 wishes to order a deferral even of a regulatory
22 asset, then that is booked to 186, miscellaneous
23 deferred debits, per the current Uniform System of
24 Accounts.

25 Q. And what is your source for that?

1 A. Source for the belief as to the
2 proper accounting for a water and sewer utility
3 or --

4 **Q. As to regulatory assets, yes.**

5 A. Just I guess my general knowledge and
6 understanding of what the word, the term regulatory
7 asset means.

8 **Q. And it is true the Commission does**
9 **have a longstanding practice, correct?**

10 A. Of ordering deferrals in the manner
11 proposed by Missouri-American in this case, yes, I
12 would agree with that.

13 **Q. And that practice has, to your**
14 **knowledge, been around for about 25 years?**

15 A. Probably over 25 years, but yeah, 25
16 to 30 years, yes.

17 **Q. And how long have you been with the**
18 **Commission?**

19 A. Since 1981.

20 **Q. I found a case in your case**
21 **participation EO-91-358 and EO-91-360. That's a**
22 **Sibley order?**

23 A. It involved other orders -- other
24 issues besides Sibley matters, but yes, I know what
25 case you're talking about.

1 Q. And you were involved in that as
2 well?

3 A. I was.

4 Q. And just going through that case
5 participation list, it did seem like there were a
6 large number of AAO, would you agree, that you've
7 participated in?

8 A. I would agree.

9 Q. And even those not listed, are there
10 cases you supervised?

11 A. There would be other cases I was
12 involved with either on an advisory basis or as a
13 supervisor.

14 Q. In fact, isn't it true at one point
15 Mr. Chuck Hyneman was under your supervision?

16 A. That is correct.

17 Q. And he and you have a little bit of a
18 different opinion about AAOs; would you agree with
19 that?

20 A. About appropriate AAO policy, I would
21 agree with that.

22 Q. Did he ever express that opinion to
23 you during his time at Staff?

24 A. He did.

25 Q. And how did he express his opinion?

1 A. Well, he certainly expressed it
2 verbally at times. He also, I think, submitted for
3 my review and the review of the senior auditors,
4 the Auditor 5s, a paper in which he proposed a
5 different approach to handling Accounting Authority
6 Orders.

7 Q. And to date that approach has not yet
8 been recommended by Staff; is that correct?

9 A. Yeah, we have not accepted that
10 approach.

11 Q. And the different approaches, there
12 hasn't been a resolution, so to speak, because the
13 different approaches continue to exist even in this
14 case; isn't that correct?

15 A. Well, I'm not sure the different
16 approaches have ever been presented to the
17 Commission for resolution. Perhaps this case may
18 be one case in which I guess these issues could be
19 considered.

20 Q. So on the one hand, I see there's a
21 longstanding practice, and that's -- I see that in
22 your testimony. But on the other hand, you do
23 recognize the GAAP and FERC standards with respect
24 to the definition of regulatory asset do create a
25 conflict with or are inconsistent with what the

1 Commission's longstanding practice has been; would
2 that be fair?

3 A. Well, I think I would state that
4 there's no requirement that the Commission define
5 or treat or present criteria for creation of
6 regulatory assets that exactly conform with either
7 FERC or GAAP standards. And further I would state
8 to the extent they do not exactly conform to those
9 standards, I don't necessarily see that as a
10 problem.

11 Q. Have you read Mr. -- I think it's
12 obvious you have, but just for the record, have you
13 read Mr. Hyneman's rebuttal and surrebuttal
14 testimony?

15 A. I have.

16 Q. Do you have those with you?

17 A. I do.

18 Q. He's got a Schedule CRH-R-1. Would
19 you please turn to that. It's the Deloitte
20 analysis.

21 A. I have it.

22 Q. All right. And you recognize that?

23 A. I believe in other contexts I've seen
24 it before. Obviously I reviewed it as part of this
25 case since it was attached to Mr. Hyneman's

1 testimony.

2 Q. And who is Deloitte?

3 A. Deloitte is one of the major external
4 auditing firms in the United States.

5 Q. And would you agree they're
6 discussing ASC 980?

7 A. Among other things, yes.

8 Q. What authority does ASC 980 have?

9 A. It's the -- basically sets forth some
10 of the Generally Accepted Accounting Principles
11 that govern how utilities are to present their
12 financial statements for public accounting
13 purposes.

14 Q. And what do you mean by for public
15 accounting purposes?

16 A. That's -- it governs fundamentally
17 how utilities are to account for certain items in
18 their SEC reporting documents, their 10Ks, their
19 10Qs. There may be other types of reporting.

20 Q. In that same schedule, it's a little
21 confusing, but I believe it's page 3 if you include
22 the cover sheet, there's a third paragraph there.

23 A. Are you talking about page 3 of 4?

24 Q. Yes.

25 A. Okay. I'm there.

1 Q. And it speaks to the definition of
2 the ASC 980-10, ASC 4520, how ASC -- at least how
3 Deloitte's interpretation of ASC would define a
4 regulatory asset. Do you have any reason to doubt
5 the credibility of that statement?

6 A. I would not dispute that Deloitte has
7 the expertise to accurately state how these items
8 are presented again by utilities for public
9 accounting purposes.

10 Q. I'm trying to draw another
11 distinction here. The word probable under that
12 paragraph, will you agree that does say likely to
13 occur, which is a high test to meet?

14 A. That's what it states, yes.

15 Q. Okay. Now, that's their definition
16 of a regulatory asset. Do you agree that in past
17 Commission orders for AAOs the term regulatory
18 asset has been used, but it has also been stated
19 that the Commission would not provide a ratemaking
20 determination associated with the order?

21 A. I would agree the Commission
22 typically, and perhaps I should say in all cases
23 that I'm aware of, have not expressed an opinion as
24 to whether the recovery of the asset, deferred
25 asset in question is probable of recovery.

1 Q. As us, as Public Counsel's view of
2 Staff, do you think this is a good thing to let the
3 Commission know about, that this definition exists,
4 to the extent they don't already know?

5 A. Knowledge is not harmful in most
6 cases.

7 Q. And there's another citation,
8 PricewaterhouseCoopers, that's the next schedule.
9 To your knowledge, who's PricewaterhouseCoopers?

10 A. They are another one of the major
11 external auditing firms operating in the United
12 States.

13 Q. And is their analysis, based on your
14 review, similar or substantially similar to
15 Deloitte's analysis?

16 A. Based on my review, and I may not
17 have necessarily gone through each and every page
18 or paragraph, but as it pertains to public utility
19 accounting topics, I think they're consistent.

20 Q. And both of these big four accounting
21 firms talk about the type of evidence that the SEC
22 would view when they were looking at what is a
23 regulatory asset. And would you agree as to those
24 types of evidence would be appropriate in that
25 context?

1 A. If I were in the role of an external
2 auditor looking at these kinds of issues, I would
3 agree in general that that's the type of evidence I
4 would be interested in reviewing.

5 **Q. And you mentioned earlier in the**
6 **cross-examination FERC also, they have a separate**
7 **definition, but it's consistent, would you agree?**

8 A. Definition of what?

9 **Q. Of a regulatory asset.**

10 A. I'm not sure they have a definition
11 per se. They certainly -- there is language in the
12 Uniform System of Accounts that generally describe
13 regulatory assets and, yes, I would agree it is
14 similar to probably what the GAAP understanding
15 would be.

16 **Q. That is a better statement of my**
17 **question. Account 182.3 would be the correct**
18 **account FERC uses, right?**

19 A. For booking of regulatory assets for
20 electric and gas utilities?

21 **Q. Yes.**

22 A. Yes, that is what is done.

23 **Q. And isn't it true their definition is**
24 **assets and liabilities that result from a rate**
25 **action of a regulatory agency?**

1 A. I'm familiar with that wording, yes.

2 Q. And in your interpretation, what does
3 a -- what does the qualifier rate to the term
4 action mean?

5 A. That the Commission has taken some
6 action upon which there's a basis to book a
7 regulatory asset. That -- just my understanding
8 would be that can certainly be a rate order or in
9 some circumstances that can be an Accounting
10 Authority Order.

11 Q. All right. In your surrebuttal
12 testimony, page 6, lines 11 through 4 (sic), let me
13 know when you're there.

14 A. Surrebuttal testimony, page 6, lines
15 11 through 14?

16 Q. Yes.

17 A. All right. I'm there.

18 Q. Okay. And that definition that you
19 give, you say what is a regulatory asset? What is
20 that definition based on?

21 A. That's very simple statement of my
22 understanding of fundamentally what a regulatory
23 asset is. It's an asset that is booked by a
24 utility based upon some action in most cases of its
25 regulator.

1 Q. And we went over this. You do have a
2 lot of experience in this area. That is based on
3 your experience, right, not a cite to an authority?

4 A. Well, I didn't copy this definition
5 from any source. That is my definition.

6 Q. In your definition we talked about
7 the way in which the word rate might qualify the
8 word action in FERC's definition.

9 A. Uh-huh.

10 Q. Now, you don't use the word rate, but
11 if we were to ask this question, would your
12 definition include rates or --

13 A. Would the actions of the regulator
14 which lead to the booking of a regulatory asset
15 include rate orders? It certainly could. I don't
16 think it's limited to that.

17 Q. What about AAO orders, in your
18 definition?

19 A. In my definition, it can and
20 certainly has in this jurisdiction included AAOs.

21 Q. And would you agree that that is
22 inconsistent with FERC's or the GAAP definition we
23 discussed earlier?

24 A. I think I would disagree with that
25 for, as I discuss in my surrebuttal testimony, in

1 almost all cases I'm aware of when the Commission
2 has allowed a company to defer costs on its books
3 based on an AAO, that deferral has been accepted by
4 the utility and its external auditor for public
5 accounting purposes.

6 **Q. Perhaps a better question is, is an**
7 **AAO a rate action?**

8 A. Is an AAO a rate action? If you're
9 asking me, I don't believe it technically is. But
10 my understanding of how FERC uses the term and
11 what -- and the definition we discussed before, I
12 think, just due to common sense, I think it
13 encompasses things like AAOs.

14 **Q. I'm sorry. You think that the first**
15 **definition encompasses AAOs?**

16 A. They're -- I don't believe FERC
17 requires that a regulatory asset be only created in
18 a rate case. That's my understanding and belief.

19 **Q. Right. Exactly. In fact, isn't it**
20 **management who is ultimately the ones who decide**
21 **whether to book a regulatory asset?**

22 A. For public accounting purposes,
23 obviously with the -- whether it's the right term
24 or not, the advice and consent or the concurrence
25 of its external auditors.

1 Q. Are you familiar with Account 182 in
2 the NARUC USOA? It talks about extra property
3 losses.

4 A. Generally.

5 Q. Perhaps a better question is, are
6 aware that certain accounts do require
7 preauthorization from the Commission to book in a
8 certain way?

9 A. I believe that's true, and my
10 understanding is Account 182 would be one of those
11 instances.

12 Q. And what about a regulatory asset,
13 does that require preauthorization from the
14 Commission?

15 A. For the text of the USOA, there is no
16 explicit requirement for Commission action to book
17 an amount there.

18 Q. So that is different than other
19 accounts?

20 A. Again, I haven't looked at the
21 defin-- the account description for 182 recently,
22 but my understanding is that would be different,
23 say, between those two accounts.

24 Q. Page 4, lines 21 through 22. It
25 bleeds into page 5, lines 1 through 2 in your

1 surrebuttal testimony. Let me know when you're at
2 that point.

3 You state that the Commission doesn't
4 have an obligation to follow GAAP and, in fact,
5 that the Commission can find alternative accounting
6 approaches could be more appropriate.

7 A. That's what my testimony states. I
8 think occasions in which it has deviated from GAAP
9 in terms of its accounting prescriptions are fairly
10 limited in number.

11 Q. Can I ask the source or the citation,
12 or is that based on experience?

13 A. Again, that's based on experience. I
14 think I've read similar beliefs in certain utility
15 texts, so to speak.

16 Q. In this context, why would it be more
17 appropriate to deviate from GAAP?

18 A. Well, in general terms, if the
19 Commission thinks or finds that some accounting
20 treatment that isn't in accordance with strict GAAP
21 would be more appropriate for its informational
22 needs in terms of utility accounting systems, they
23 are free to do so.

24 I do provide at least one example in
25 my testimony where the Commission ordered a

1 deferral of an amount for Ameren Missouri that
2 ultimately was not accepted as an appropriate
3 deferral item on that utility's public accounting
4 financial statements.

5 Q. Is that the ER-2014-0258 case that
6 you reference on page 6?

7 A. That was the rate case that handled
8 the deferral. The order allowing the deferral was
9 a previous case.

10 Q. The one you cite to on page 5,
11 EU-2012-0027?

12 A. Yes.

13 Q. So -- well, doesn't that actually
14 confirm that there is a difference between -- I
15 guess doesn't that confirm that in that case Ameren
16 Missouri didn't feel comfortable looking at it as a
17 regulatory asset on their public financial
18 statements even though the Commission authorized
19 them to do it?

20 A. That is exactly what happened, yes.

21 Q. On page 5, that same page, line 16
22 through 19, you talk about some fundamental
23 principles mandated by GAAP. Can you think of some
24 instances in which the fundamental principles of
25 GAAP would not be reasonable to apply?

1 A. Well, there are a number of times in
2 which the Commission's decisions have deviated from
3 strict GAAP. One example again is the Ameren
4 Missouri, what I call the lost revenues deferral.
5 Another instance, going back a number of years, is
6 treatment of OPEB costs, post retirement medical
7 benefit costs, in which the Commission for a period
8 of time continued pay as you go ratemaking
9 treatment but for which the utilities involved were
10 not allowed under GAAP to book the expenses on a
11 pay as you go basis.

12 Q. I guess that's referring to an
13 instance, but it's not really giving the rationale,
14 but I'll accept that, I guess.

15 Can I ask, what would be the defining
16 event that would cause an expense deferral, I
17 guess, to transition to a regulatory asset?

18 A. An expense deferral ordered by the
19 Commission to be regarded as a regulatory asset for
20 GAAP purposes? If that's your question, then the
21 answer is, if the Commission's deferral otherwise
22 meets the separate tests under GAAP for recognition
23 of that deferral on the utility's public financial
24 statements.

25 Q. I see we're getting close here to

1 that 12 o'clock mark, so I'll try to wrap up
2 quickly. I'm eliminating questions.

3 A. Thank you.

4 Q. Is it your understanding that in the
5 initial application of the company they were, in
6 fact, requesting ratemaking treatment in this case?

7 A. I think it would be reasonable to
8 interpret some of the language in the original
9 testimony as seeking ratemaking findings.

10 Q. They've since removed the explicit
11 ratemaking request, correct?

12 A. Yes.

13 Q. I think I'll move on from this and go
14 to the -- because we have limited time, and speak a
15 little bit about the amortization. What benefits
16 does Staff see with, I guess, waiting three months
17 or a quarter of a year to amortize?

18 A. Well, I think when you have a
19 deferral, you will never achieve perfect matching
20 between the time in which the expenses were
21 incurred and when they're recognized on the books.
22 I think it's more of a question of better matching
23 versus worse matching.

24 For us, it would be acceptable to
25 start amortization of an ordered deferral for

1 accounting purposes at a reasonable length in time
2 either following incurrence of the cost or when the
3 Commission's deferral order is issued and -- well,
4 I'll just leave it at that.

5 **Q. So the first part you said after**
6 **occurrence of the cost?**

7 A. That could be one trigger for the
8 amortization, or you could wait for the actual --
9 sometimes there's a lag between when they incur the
10 cost and when the deferral order is granted by the
11 Commission.

12 **Q. And Mr. Riley is, I guess,**
13 **recommending to start the amortization when it**
14 **would be incurred, correct?**

15 A. Well, I think to be technical,
16 shortly after the actual expense is paid. I think
17 it will have been incurred for several months
18 before that on the company's books and records.

19 **Q. And wouldn't -- I guess the benefit**
20 **of doing that is it better matches up, it better**
21 **meets the matching principle, correct?**

22 A. I don't necessarily see a major
23 difference between what Mr. Riley is recommending
24 and what Staff is recommending, but from -- from
25 your perspective, I will accept that's -- the

1 quicker the amortization, the better the matching.

2 MR. SMITH: Okay. Thank you.

3 JUDGE BURTON: Okay. It's currently
4 11:47. Mr. England, I don't think we're going to
5 be able to get your cross-examination in before we
6 have agenda at noon, so I would suggest we just
7 take a recess and reconvene at 1:30. One? Okay.
8 One o'clock. So we will see you back on the stand
9 at one o'clock, Mr. Oligschlaeger.

10 (A LUNCH BREAK WAS TAKEN.)

11 JUDGE BURTON: It's a little after
12 one and we are back on the record.
13 Mr. Oligschlaeger, you're still on the stand. I'll
14 remind you you're still under oath. I would also
15 remind everyone to please silence any of your
16 electronic devices if you turned on the sound while
17 we were on our lunch break.

18 I believe we are now at the point
19 where, Mr. England, it's your turn for
20 cross-examination.

21 MR. ENGLAND: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. ENGLAND:

23 Q. Good afternoon, Mr. Oligschlaeger.

24 A. Good afternoon.

25 Q. At page 9 of your rebuttal

1 testimony....

2 A. I'm there.

3 Q. And now the reference I have doesn't
4 seem -- at least the testimony I'm looking at
5 doesn't seem to match the reference I have. Let
6 me -- well, I did have the right reference. I just
7 can't read page numbers. It is page 9, lines 1
8 through 8. I believe you have testimony there to
9 the effect that the company will not have to wait
10 long in order to capture the impact of the
11 increased property taxes at issue in customer
12 rates. Do you see that?

13 A. I do.

14 Q. Would you agree with me that --
15 JUDGE BURTON: Mr. England, will you
16 confirm that your speaker is on.

17 MR. ENGLAND: It is but I'm not
18 speaking into it. Sorry. Thank you.

19 BY MR. ENGLAND:

20 Q. Would you agree with me that without
21 a deferral of the property tax increases as
22 requested in this case, the company would not be
23 able to recover those property tax increases
24 occurring in 2017 and the first five months of 2018
25 in its customer rates?

1 A. I would agree with that.

2 Q. Thank you. Would you agree with me
3 that the Staff's traditional approach in a rate
4 case is to allow property tax expenses that have
5 actually been paid?

6 A. I know we take that approach in some
7 cases. There are other cases in which we calculate
8 a ratio of property taxes paid to plant balances
9 and then apply them to a more updated plant
10 balance.

11 Q. Okay. As an example, and this is
12 based on my experience, in the company's last rate
13 case that was decided in May of 2016, I believe
14 Staff's revenue requirement in that case was based
15 on the actual property tax expenses incurred by the
16 company in calendar year 2015. Does that comport
17 with your recollection?

18 A. I don't specifically recall. It does
19 not necessarily surprise me what you're saying.

20 Q. Well, if Staff follows its
21 traditional approach for purposes of the current
22 pending rate case, would Staff only include
23 company's actual property tax expenses incurred in
24 2017 even though that rate order wouldn't be issued
25 until late May or early June of 2018?

1 A. First of all, I don't know that we've
2 made our final determination of what our position
3 would be. I would expect certainly to take into
4 account the 2017 property tax payment as well as
5 known and measurable information, if relevant,
6 pertaining to year 2018 property taxes.

7 Q. So you think it would be appropriate
8 to look at the increase in property taxes that will
9 occur in St. Louis County as a result of the
10 phase-in from 2017 to 2018 for purposes of your tax
11 expense?

12 A. And again, with the caveat we haven't
13 made a final determination, I think we would
14 certainly consider that event that I guess is
15 effective January 1st, 2018.

16 Q. Even though we don't pay that tax
17 expense until December of 2018?

18 A. Well, again, yeah, we would -- we'll
19 take a look at it.

20 Q. Very judicious. Mr. Oligschlaeger,
21 I'm going to switch gears, talk a little bit about
22 this amortization. In your surrebuttal testimony,
23 I think you respond to Public Counsel witness Riley
24 regarding the start date for an amortization of a
25 deferral authorized in this proceeding and

1 recommend that that amortization start no later
2 than April 1 --

3 A. Yes.

4 Q. -- of 2018?

5 Would you agree with me that in order
6 to begin booking the amortization expense, the
7 company will need to know the period over which the
8 deferred expenses will be amortized?

9 A. Yes.

10 Q. And if the Commission does not make
11 that determination until the rate case, it's going
12 to be hard to begin booking it before the rate case
13 order becomes effective, right?

14 A. That's a fair point. And to the
15 extent the Commission believes that an immediate --
16 or an amortization prior to the rate case should
17 start, it will be appropriate to designate an
18 amortization period for accounting purposes.

19 Q. Finally, just to be clear,
20 Missouri-American is subject to the NARUC Uniform
21 System of Accounts; is that right?

22 A. That is correct.

23 Q. And does the FERC system of accounts
24 have any impact or relevance to the accounting of
25 Missouri-American Water Company?

1 A. No direct relevance or impact, no.

2 MR. ENGLAND: Thank you. No other
3 questions.

4 QUESTIONS BY COMMISSIONER STOLL:

5 Q. Thank you, Mr. Oligschlaeger, for
6 your testimony, and I think I have a couple
7 questions. I was -- do you recall when the statute
8 was changed in 2007, do you recall this change from
9 a seven-year to a 20-year recovery period? Was
10 that something you were --

11 A. I don't specifically recall it. I
12 think it would simply have come to our attention at
13 the time, presumably because of higher property tax
14 claims made by the utilities as a result of that
15 change. But we just reflected that change in
16 rates, and I don't think it was something -- it
17 wasn't a big deal at the time.

18 Q. Yeah. And so tell me again, in your
19 experience with this where utilities could phase
20 this in, they weren't required to make this change
21 until, is it 2017, or were they --

22 A. As I understood primarily from the
23 testimony of Mr. Wilde, other taxing authorities
24 made the change to go to the 20-year life earlier
25 than 2017. It is County Water -- or not --

1 St. Louis County specifically the change was made
2 in 2017, though I believe their testimony is
3 arguably it should have been done sooner.

4 Q. Yeah. If part of the concern by the
5 utility is this period in which the property taxes
6 would be paid but not recovered, is it correct that
7 that would have occurred no matter when the change
8 was made?

9 A. Assuming the change was not made
10 concurrent with --

11 Q. Yeah.

12 A. -- a rate case, within the cutoff
13 periods within the rate case, yes, I think the same
14 problem would likely have occurred to some degree.

15 Q. Okay. This seems like one of those
16 things that a -- the whole issue with the change in
17 Chapter 137, I don't know how relevant this is, but
18 it just seems like the kind of change that would
19 have been brought to a legislator's attention
20 rather than the legislature thinking, ah, I think
21 we ought to go make these changes. What prompted
22 this? Do you have any idea?

23 A. What prompted what, the change?

24 Q. The change from the recovery period
25 over seven years, then 20 years.

1 A. I really have no idea.

2 **Q. Could you speculate at all?**

3 COMMISSIONER KENNEY: Commissioner, I
4 think I know why this afternoon that two
5 Commissioners named Rupp and Coleman are not here
6 because they were probably in the Senate at that
7 time.

8 COMMISSIONER STOLL: I think you're
9 right. Maybe I should talk to them. I think
10 that's the only question I have for you right now.
11 Thank you.

12 QUESTIONS BY COMMISSIONER KENNEY:

13 **Q. I have a follow-up on that question.**
14 **So American Water -- this issue has never come**
15 **before the Staff or the Commission regarding the**
16 **change in the depreciation allowance since 2007?**

17 A. No company in my recollection has
18 made a claim for special accounting treatment
19 related to that change.

20 **Q. And has this -- to your knowledge,**
21 **did this change in the other 23 counties in**
22 **American Water's district, did the changes begin in**
23 **2008 or were some before then or do you know?**

24 A. I don't know specifically. I believe
25 the testimony this morning was some certainly

1 occurred in previous years earlier than 2017.

2 Q. But it's our practice that we include
3 property taxes into the rate base, correct?

4 A. Well, not to be picky with the
5 terminology, yes, we include them in expense.

6 Q. Expense. Excuse me. I apologize. I
7 appreciate you correcting me on that. Thank you.

8 Our goal is to try to include them.
9 It's just the company -- whether the company would
10 have done this in 2006 or '08, '09, '10, I'm sure,
11 unless it was done in a rate case like you said,
12 the company would have had to suffer -- or not
13 suffer -- absorb that expense?

14 A. Until such time as it could be
15 recovered in rates.

16 Q. No. There's a certain expense that
17 can never be recovered, correct?

18 A. Well, looking -- going back, yes, any
19 kind of foregone losses or excess profits you make
20 are the company's to keep or to incur, going
21 forward only.

22 Q. On that, that brings -- if you could
23 educate me on this. On your surrebuttal on page 7,
24 which was discussed earlier, when you were
25 discussing OPC's comments, on page 4 through, let's

1 **see, lines 6 through 8, you said that there is**
2 **nothing in the USOAs or other commission rules that**
3 **prohibit utilities from seeking commission**
4 **authorization to implement desired accounting**
5 **treatment such as deferral of extraordinary costs.**

6 A. Right.

7 Q. **So could the company put this in**
8 **Account 186?**

9 A. Without going to the Commission,
10 saying give us approval.

11 Q. **Okay. Then how do we deal with that**
12 **in the future? How does that get dealt with?**

13 A. Okay. Well, number one, I doubt the
14 company would want to do this, do that for a
15 specific reason.

16 Q. **Explain that to me.**

17 A. They can choose to do that for
18 regulatory accounting purposes, okay, and not seek
19 our explicit authorization, but the fact that they
20 would not get the Commission blessing, so to speak,
21 makes it more likely they will not be able to
22 reflect the deferral on their public financial
23 statements.

24 And partly the benefit that companies
25 seek through deferrals is to hold their earnings,

1 maintain their earnings at a higher level both for
2 regulatory accounting purposes and also their SEC
3 accounting purposes.

4 **Q. So that doesn't have anything to do**
5 **with the ability to recover that expense?**

6 A. Well, the SEC -- or company's
7 management, their external auditors, I guess
8 ultimately the SEC, has to make a judgment in terms
9 of the deferral. Does this meet the criteria under
10 GAAP of being probable of recovery? One of the
11 things they will look at, one of the pieces of
12 evidence is what has the Commission said about
13 this. Okay. They order -- allow the deferral as
14 part of a rate case, that's strong evidence of
15 future recovery.

16 If they order it as part of an AAO,
17 such as what we're dealing with here today, that's
18 probably not as strong of evidence of future
19 recovery, but it's some evidence, and in most cases
20 in the past in Missouri has been enough evidence,
21 the fact that an AAO was issued, to allow them to
22 carry that forward to their public statements.

23 **Q. So if it wasn't an AAO and they just**
24 **booked it in 186, when would that come before the**
25 **Commission?**

1 A. Well, presumably then they would seek
2 recovery in a future rate case.

3 **Q. But not this current rate case?**

4 A. Well, if they'd done this several
5 months ago, they could have.

6 **Q. So it would be a future rate case if**
7 **they did that?**

8 A. Right.

9 **Q. If they chose to do it?**

10 A. And it's likely the -- I don't know
11 about the Commission. The parties might look and
12 say, you didn't even get authorization or approval
13 for this. Why would we ever allow this recovery?

14 COMMISSIONER KENNEY: I appreciate
15 that. Okay. All right. That's all I have. Thank
16 you very much.

17 JUDGE BURTON: Mr. Oligschlaeger, I
18 have a few questions for you.

19 COMMISSIONER KENNEY: I have one more
20 question.

21 BY COMMISSIONER KENNEY:

22 **Q. It was brought up, I'm not sure who**
23 **brought it up, but Staff does not recommend**
24 **approval of the AAO, but normally you would provide**
25 **an alternative and you haven't. Is there something**

1 you -- if the Commission did approve the AAO, are
2 there anything specific that you would like
3 included?

4 A. The standard language I think of no
5 ratemaking findings certainly, and as part of that,
6 yes, we are recommending that the company begin to
7 amortize it on its books starting no later than
8 April of 2018.

9 COMMISSIONER KENNEY: Okay. Thank
10 you.

11 QUESTIONS BY JUDGE BURTON:

12 Q. I'm going to lead off with that final
13 question. Why April of 2018 for amortization?

14 A. Okay. Again, there's nothing magic
15 about this. Okay. The cost increases began to be
16 incurred on Missouri-American's books at some point
17 earlier this year. Okay. And because they're not
18 go to get any recognition of this until some point
19 in 2018, the deferral, we believe it's reasonable
20 that the amortization of the expense that they're
21 deferring begin shortly after probably in this case
22 when I would expect the order to come out.

23 We don't think as a matter of policy
24 in most cases you should wait for the rate case to
25 begin the amortization.

1 **Q. Would there be anything wrong with**
2 **beginning the amortization with January 1, 2018 or**
3 **when the order goes into effect?**

4 A. To be honest, because it's a
5 relatively short period of time between the
6 amortization period and the deferral of the expense
7 and all of those scenarios, I don't think there's
8 anything seriously wrong with any of them. You
9 could do it January. You could do it April. You
10 could do it with the order, I guess, June 1st or so
11 in the next case. And I think that would generally
12 fit into the Staff's criteria of begin the
13 amortization shortly after either the expense is
14 recognized or when the AAO is issued.

15 **Q. But there's no financial difference,**
16 **fiscal difference in issuing it in an order on --**

17 A. Well, the fiscal difference would be
18 they would have to recognize the amortization
19 expense starting in April under our scenario,
20 January OPC, and I guess June under the company.
21 So there would be different amounts of expense
22 hitting the books in 2018 regarding the deferral
23 amortization. I don't think that will be a major
24 financial impact one way or the other.

25 **Q. But there's no harm in waiting till**

1 the rate case order is issued to make that
2 decision?

3 A. Well, certainly it's not what we
4 would prefer. We would prefer quicker action. But
5 in terms of -- in the past we've had a generic
6 problem with just waiting potentially years to
7 begin an amortization in an AAO. To us, that's not
8 good accounting or good ratemaking. But that's not
9 the scenario we fit here because the company has a
10 rate case on file.

11 Q. But there is an advantage to
12 addressing the amortization schedule with this
13 order if the AAO is granted?

14 A. We think that would be more
15 appropriate than waiting until the rate case.

16 Q. Now, under the Commission's rules and
17 regulations, and I'm talking about specifically
18 4 CSR 240-50.030, would Missouri-American Water
19 Company qualify as a water company that has annual
20 water operating revenues of \$500,000 or more?

21 A. I believe so.

22 Q. And so that means that we should be
23 using the Class A version for the National
24 Association of Regulatory Utility Commissioners
25 1973 version revised in July 1976?

1 A. Yes.

2 Q. And under those guidelines, looking
3 at Account 186, which is the miscellaneous deferred
4 debits, this is where we would be if it was granted
5 placing the recording for this, correct?

6 A. Yes.

7 Q. And you say that technically, and I
8 want to be clear on this, there's no distinction
9 between this being a deferred debit and being
10 classified as a regulatory asset?

11 A. There's no distinction in the sense
12 that either way the company would be free to carry
13 that forward in a later rate case and seek recovery
14 of the balance.

15 Q. How it's treated by the company would
16 be the same?

17 A. Yes.

18 Q. How it's treated by the Commission
19 would be the same?

20 A. Yes.

21 Q. How it's treated by the other parties
22 would be the same?

23 A. Yes.

24 Q. Now, I know there's been some
25 discussion of the FERC version for the NARUC USOA,

1 the USOA from FERC for electric and gas companies
2 that might be allowed, but under this revised 1976
3 version and looking at the general instructions, I
4 believe it's under extraordinary items under seven,
5 and that pinpoints us also to Accounts 433 and 434,
6 I believe.

7 A. Uh-huh.

8 Q. Do you see any difference in the
9 standard that the Commission has used for
10 determining extraordinary items?

11 A. Difference?

12 Q. In general versus what these
13 definitions are.

14 A. I think the -- and again, if I follow
15 where you're going, the definition, there is a
16 definition of extraordinary in the chart of
17 accounts both for FERC and for NARUC. Okay. I
18 think the Commission has used a slightly different
19 but very consistent in meaning definition in some
20 of its orders involving AAOs. So I don't see a
21 difference.

22 Q. So for this case, which definition
23 should the Commission use, which standard for
24 extraordinary?

25 A. Either one I think will work. I

1 think the standard that I'm most familiar with is
2 unique, unusual and nonrecurring, and that would
3 seem to cover the basics of what you need to know
4 about an extraordinary event.

5 Q. And that would be consistent with
6 this version of the NARUC 1976 revised version as
7 approved by the Commission?

8 A. It's probably not consistent
9 absolutely in wording, but I think it is consistent
10 in meaning.

11 Q. Let me -- this is a little bit off
12 topic, but does the -- do you or does Staff have
13 any opinion as far as why we're using the 1976
14 version of the NARUC USOA?

15 A. Because it hasn't been updated. And
16 actually, to address something in Mr. Hyneman's
17 surrebuttal testimony, he suggests it should be
18 updated, and I actually agree with that. I don't
19 think it's a major problem having this version of
20 the USOA because I think there's really only
21 marginal differences between that and more current
22 versions, but that's something we should work
23 towards.

24 Q. Now, I want to ask you briefly, you
25 had an opportunity, I'm assuming, to look over this

1 Schedule JRW-1 and JRW-3, which I believe
2 identifies the value for the property and gives a
3 brief description of the property that's at issue
4 here in both Platte County and St. Louis County?

5 A. I've looked at it.

6 Q. And what's your understanding of how
7 this property would be categorized or assessed by
8 the counties as far as under Chapter 137?

9 A. Okay. My knowledge of Chapter 137 is
10 very, very sketchy, and we've just not had to delve
11 into those details in the past. So I really can't
12 comment on that.

13 Q. Thank you for your candor about that.

14 A. Yes.

15 QUESTIONS BY COMMISSIONER RUPP:

16 Q. Sorry. I had a meeting, so I missed
17 some of what you testified. I'll go back and read
18 it, but I have some questions. So if they're
19 redundant, I apologize and just let me know.

20 In your testimony you said that AAOs
21 shouldn't be given for ordinary expenses. So is
22 tree trimming an ordinary expense, in your opinion?

23 A. In most contexts it is, yes.

24 Q. Has the Commission ever granted an
25 AAO for tree trimming, for expenses related?

1 A. The one instance I remember, recall
2 is when a rule -- rulemaking was put into effect
3 sometime around 2007 or 2008 which had the effect
4 of increasing the expenditures utilities had to
5 make for their vegetation management or tree
6 trimming. As part of that rule, I believe there
7 was provision for the utilities to defer the excess
8 or the additional tree trimming expenses they
9 incurred for future recovery.

10 Q. So would it be safe to say it was the
11 magnitude of the increase of the tree trimming
12 expenses that allowed the Commission to grant a
13 request for an AAO?

14 A. That may have been one factor. I
15 think another factor was, quite frankly, it may be
16 a legal understanding, if the Commission orders a
17 utility to incur a specific expense, then
18 additional measures beyond the normal are necessary
19 to make sure the companies can recover those
20 mandated expenses.

21 Q. Going from a seven-year tax
22 depreciation rate to a 20-year tax depreciation
23 rate is roughly an increase of about 200 percent in
24 property tax expenses. Would you consider that as
25 like a -- is it an extraordinary amount in one

1 **year?**

2 A. I'm not sure about the 200 percent.

3 **Q. I'm ballparking.**

4 A. I think the increase identified by
5 the company in the first year is somewhere between
6 four and a half and five million compared to a
7 previous base of around 14 million. So having said
8 that, I wouldn't consider that extraordinary. I
9 would consider it material.

10 **Q. You worked here for about 30 years.**
11 **How many times have you seen a public utility faced**
12 **with a roughly almost 200 percent increase in**
13 **property taxes they must pay?**

14 A. I would -- I would say this is a rare
15 situation.

16 **Q. In your opinion, should**
17 **Missouri-American Water Company known or should**
18 **have known if it was using the correct depreciation**
19 **rate when it was self-reporting its property taxes**
20 **it St. Louis County, or were they operating in good**
21 **faith based off the information St. Louis County**
22 **gave them at the time?**

23 A. Okay. That is not necessarily clear
24 to me. I would say our position on this matter
25 doesn't really depend on whether they kind of knew

1 it was a problem or not.

2 I would say, based on the fact that
3 the 23 other counties appear to have been doing a
4 treatment different than what St. Louis County was
5 allowing them in the past, that I would think at
6 the very least there should have been some
7 anticipation that that might change in the future.

8 **Q. And for the purposes of materiality**
9 **impact, should the Commission look at the impact on**
10 **2017 and 2018 separately or collectively?**

11 A. I would -- I calculated my
12 materiality factors using 2017 only numbers and
13 then combining the two. I don't think -- in this
14 particular case, as it relates to materiality, it
15 doesn't really matter as it pertains to St. Louis
16 County. It's material either way.

17 **Q. So how has the Commission looked at**
18 **multiyear impacts in the past, or have they?**

19 A. Usually when we're dealing with AAO
20 deferral type issues it has to do with things like
21 storms and floods and that sort of thing in which
22 the costs are incurred within a fairly restricted
23 period of time.

24 So this is a little bit unusual in
25 that it goes to 12 to 18 months. I think in this

1 case it's okay to look at the fiscal impact for
2 both years together and comparing it for the
3 materiality standard.

4 COMMISSIONER RUPP: Thank you, Judge.
5 That's all I have.

6 JUDGE BURTON: Thank you. Next we
7 will have questions based off of questions from the
8 Bench. Begin with Missouri-American.

9 MR. ENGLAND: I think I go last.

10 JUDGE BURTON: Okay. Then St. Louis
11 County?

12 RECROSS-EXAMINATION BY MR. FOX:

13 Q. I'm sorry. When you're talking about
14 materiality -- sorry. When you're talking about
15 materiality, do you take into consideration again
16 Missouri-American failing to pick up on this after
17 it's created the situation versus St. Louis County?

18 A. Okay. I think that question pertains
19 more to the extraordinary question as opposed to
20 the materiality question. So the answer to your
21 question is no.

22 Q. Nuts. And I guess I would find it
23 hard to distinguish between the two, but again, I'm
24 a novice on this one.

25 MR. FOX: Okay. Thank you.

1 JUDGE BURTON: Public Counsel?

2 MR. SMITH: Yes, just a couple of
3 questions very quickly.

4 RECROSS-EXAMINATION BY Mr. SMITH:

5 Q. Mr. Oligschlaeger, do you recall when
6 I guess both Commissioner Kenney and Judge Burton
7 were asking you about kind of the effect of an AAO
8 and the relationship between FERC and USOA and
9 those definitions?

10 A. Yes.

11 Q. And you said earlier, I think, that
12 you do have a copy of Mr. Hyneman's testimony in
13 front of you?

14 A. I do.

15 Q. Would you be able to turn to his
16 rebuttal schedule at CRH-R-2. This would be the
17 PricewaterhouseCoopers analysis. And you can see
18 there's some numbering on those pages. If you'd
19 flip to, at the bottom left it should say 17-4
20 slash regulated operations, if you can find that.

21 A. I think you've got me on that one.
22 I'm not able to locate that.

23 Q. Oh, 17-14. I'm sorry. My apologies.

24 A. That I can find.

25 Q. Okay. And you see where it says PWC

1 interpretive response to a question?

2 A. Yes.

3 Q. And if you go down to the second
4 paragraph where it begins reporting entities, do
5 you see that?

6 A. I do.

7 Q. About midway through or more towards
8 the end, it's the last sentence which says -- I
9 guess would you agree that this practice sort of
10 describes what happens in Missouri?

11 A. You mean as described in the last
12 sentence?

13 Q. Yes.

14 A. Yes, the part about a cost being
15 deferred for consideration in a future rate case
16 with no assurance of recovery, that has been the
17 Commission's policy for some time.

18 Q. And do you recall with
19 PricewaterhouseCoopers that if a commission, not
20 just the Missouri Commission but any commission did
21 have an Accounting Authority Order that indicated
22 that costs may be deferred for consideration in a
23 future rate case with no assurance of recovery, do
24 you agree with their opinion that that does not
25 provide sufficient evidence that future recovery is

1 **probable?**

2 A. Well, I mean, I guess my difficulty
3 in agreeing with it is that's not been the case in
4 Missouri where the vast majority of AAOs that have
5 been issue for over 20 years with no assurance of
6 recovery have qualified for inclusion on the
7 utility's public financial statements as a deferred
8 asset.

9 Q. When you say have qualified, do you
10 mean that that's a decision the utility made in
11 their public reporting, public accounting
12 reporting?

13 A. Yes, again, with the concurrence
14 presumably of their external auditors.

15 Q. So you disagree with that?

16 A. I'm not sure I so much disagree with
17 it as would simply state that I guess the total
18 evidence surrounding past Missouri Commission AAOs
19 has been sufficient to allow them to be reflected
20 for GAAP purposes.

21 Q. I think Commissioner Rupp talked
22 about multiyear situations.

23 A. Right.

24 Q. In one definition of extraordinary it
25 could be seen -- do you agree there's a risk of

1 **multiyear situation being seen as a recurring**
2 **situation?**

3 A. That could be a scenario, yes.

4 MR. SMITH: No further questions.

5 JUDGE BURTON: Thank you.

6 Missouri-American?

7 MR. ENGLAND: Thank you, Judge.

8 RE CROSS-EXAMINATION BY MR. ENGLAND:

9 **Q. Staying with the Pricewaterhouse**
10 **guide, is that binding on utility companies?**

11 A. I assume it's intended to be binding
12 on PWC and how they look at these types of issues.
13 I'm not sure they would be binding on utility
14 companies per se, anything that's said here.

15 **Q. Well, presumably PWC is also an**
16 **outside auditor for some utility companies, is it**
17 **not?**

18 A. Right.

19 **Q. And based on your 20 years of**
20 **experience where utilities in Missouri have gotten**
21 **a order to defer certain expenses or costs without**
22 **a guarantee of ratemaking recovery who have**
23 **nevertheless been able to book that as a regulatory**
24 **asset with the concurrence of their outside**
25 **auditor, Pricewaterhouse have been one of those**

1 **outside auditors?**

2 A. I'm aware that Pricewaterhouse is the
3 external auditor for at least some of our major
4 utilities.

5 Q. **So it could be a situation where it's**
6 **do as I say, not as I do, for Pricewaterhouse?**

7 A. Well, that could be. I would suggest
8 another scenario is this particular paragraph only
9 focuses on one thing, whether the AAO itself has --
10 includes any ratemaking determinations, and that's
11 one thing certainly that management and their
12 external auditors would look at. But there are
13 other factors, such as the past history of the
14 Commission of allowing perhaps similar deferrals to
15 be included in rates and so on.

16 Q. **Fair enough. Thank you. I believe**
17 **in answer to some questions by Commissioner Stoll,**
18 **and you were talking about the transition or change**
19 **from the old law to the new old that had**
20 **implemented MACRS class recovery lives in around**
21 **2007, you said something that you didn't think it**
22 **was that big a deal at the time. Do you recall**
23 **that?**

24 A. And let me clarify. That big a deal
25 to us particularly in the auditing staff who have

1 responsibility for looking at property taxes and
2 all the other costs. I mean, I'm sure we were
3 aware of it, but for the most part our
4 recommendations just took that into account and
5 reflected the resulting numbers for the companies
6 in property tax expense.

7 Q. If certain taxing authorities,
8 certain counties were already at or close to a
9 20-year recovery period independent of the MACRS
10 statute, if you will, then the change to the
11 statute would not have been a big deal for them,
12 would it?

13 A. Yeah. The more the change in the
14 deprec-- or the lives or the depreciation rate, the
15 bigger the fiscal impact.

16 Q. I guess where I'm going with this, do
17 you know of any law, regulation that required
18 counties to use seven years prior to 2007?

19 A. I have no knowledge of that.

20 Q. Getting back to this issue about
21 amortization, just take for purposes of example or
22 hypothetical the Commission allows the company to
23 defer the seven and a half million dollars that it
24 expects to incur in 2017 and the first five months
25 of 2018. What do they book on -- and then assume

1 further that we're directed to begin the
2 amortization in January of 2018. What do we book,
3 1/36 for a three-year amortization, 1/60 for a
4 five-year amortization?

5 A. If the Commission were to not give
6 you any guidance, I think it would be up to the
7 company to determine the amortization period. Now,
8 we go down that road, it's possible that someone
9 might petition the Commission to say, hey, what
10 amortization period should we use if we're not
11 going to wait for the rate case? So I think it
12 could go either way.

13 Q. And then we get into the position of
14 making ratemaking determination outside the scope
15 of a rate case, right?

16 A. I would disagree with -- no. That's
17 an accounting determination, what we're talking
18 about here. Let's say that for whatever reason
19 everyone agreed that we use a five-year
20 amortization period for purposes of your initial
21 booking. That would still be subject to change and
22 challenge in the rate case, and the company could
23 argue for something shorter and other parties could
24 argue for something longer.

25 Q. And then they would go back

1 retroactively and change the booking to the extent
2 the amortization period changes from what was
3 originally booked?

4 A. I wouldn't envision that. I think
5 that would be a change going forward.

6 Q. I believe you had a question from
7 Judge Burton regarding the NARUC system of accounts
8 and the fact that it's a 1976 version and you
9 didn't think it would be a bad idea to update it,
10 correct?

11 A. That's correct.

12 Q. Would you agree with me that that
13 would require a rulemaking and not necessarily
14 something could be done in the context of this
15 company's specific AAO case?

16 A. I would certainly agree with that.
17 We did update the electric -- I forget whether we
18 did the gas, but certainly the electric chart of
19 accounts in the early 1990s, and that required a
20 rulemaking.

21 MR. ENGLAND: Thank you, sir. No
22 other questions.

23 JUDGE BURTON: Staff, redirect?

24 REDIRECT EXAMINATION BY MS. MERS:

25 Q. Mr. Oligschlaeger, you've clarified

1 that FERC does not apply to this case, correct?

2 A. That's correct.

3 Q. But even if we would use FERC
4 guidelines, would that change Staff's
5 recommendation that an AAO is not appropriate in
6 this case?

7 A. It would not.

8 Q. Okay. I've heard some of the parties
9 refer to this as losing out on money because the --
10 since 2015 the property tax has increased. Would
11 you agree, though, that since 2015 there's probably
12 other cost items that have decreased for
13 Missouri-American?

14 A. Certainly to look at any company's
15 financial position at a point in time, you have to
16 take into account all relevant factors.

17 Q. So you couldn't really say if the
18 revenue requirement at this point in time is
19 insufficient or there is really lost dollars
20 without looking at it in the context of a rate
21 case, correct?

22 A. That's -- I would argue that is true.

23 Q. And finally, if a company,
24 Missouri-American, an electric utility, they put
25 new plant in, that increases property taxes,

1 correct?

2 A. All other things being equal.

3 Q. And it could increase it pretty
4 dramatically depending on the size of the plant,
5 correct?

6 A. That is correct.

7 Q. But to your knowledge, has an AAO
8 ever been granted for increases in property taxes
9 due to new plant?

10 A. I don't recall any such event.

11 MS. MERS: Okay. I have nothing
12 further. Thank you.

13 JUDGE BURTON: Thank you,
14 Mr. Oligschlaeger. You are excused.

15 Public Counsel, you may call your
16 first witness.

17 (Witness sworn.)

18 JUDGE BURTON: You may be seated.

19 CHARLES HYNEMAN testified as follows:

20 DIRECT EXAMINATION BY MR. SMITH:

21 Q. Would you please state and spell your
22 name for the court reporter.

23 A. Yes. It's Charles R. Hyneman,
24 H-y-n-e-m-a-n.

25 Q. And, Mr. Hyneman, what is your job

1 **title?**

2 A. I'm a Chief Accountant.

3 **Q. And who do you work for?**

4 A. The Office of Public Counsel.

5 **Q. How long have you worked there?**

6 A. Approximately two years.

7 **Q. Have you filed testimony in AAO cases**
8 **previously?**

9 A. Yes.

10 **Q. And did you prepare or cause to be**
11 **prepared testimony in this case?**

12 A. Yes.

13 MR. SMITH: May I approach the court
14 reporter?

15 JUDGE BURTON: You may.

16 MR. SMITH: I've just handed the
17 court reporter two items, which I have lost track
18 of where we are in the exhibit numbers. Is it 6
19 and 7?

20 MS. SHEMWELL: 8 and 9.

21 MR. SMITH: 8 and 9. Those will be
22 marked as Exhibits 8 and 9.

23 (EXHIBITS 8 AND 9 WERE MARKED FOR
24 IDENTIFICATION BY THE REPORTER.)

25 BY MR. SMITH:

1 Q. Mr. Hyneman, are you familiar with
2 those exhibits?

3 A. Yes.

4 Q. What are they?

5 A. It would be my rebuttal testimony and
6 my surrebuttal testimony.

7 Q. And would they appear to be a true
8 and correct copy of that testimony?

9 A. Yes, they would.

10 Q. Do you have any corrections to make?

11 A. I have a couple of minor corrections
12 in my rebuttal testimony.

13 Q. What are those?

14 A. On page 5, line 24, the word
15 certainty is misspelled. The L in the word needs
16 to be changed to a T. And on page 19, lines 5
17 through 7, the last sentence beginning with
18 Chairman Hall through the word asset on line 7
19 should be deleted.

20 And finally, on page 24, on line 4 --
21 I'm sorry, on line 3, there needs to be the word or
22 after the word whether.

23 Q. Do you have any other corrections to
24 make?

25 A. No.

1 Q. Subject to those corrections, if I
2 were to ask you the same questions as appear in
3 your rebuttal testimony and your surrebuttal
4 testimony marked as OPC Exhibit 8 and 9, or just
5 Exhibit 8 and 9, would your answers be the same or
6 substantially the same?

7 A. Yes.

8 Q. And before I do tender you for cross,
9 I understand you have a retirement coming up. This
10 could be your show, so to speak. And so I hope you
11 get some good questions.

12 MR. SMITH: And with that, I would
13 offer Exhibits 8 and 9 for admission and tender
14 Mr. Hyneman for cross.

15 JUDGE BURTON: Thank you. Exhibits 8
16 and 9 have been offered. Are there any objections?

17 MR. ENGLAND: No objections.

18 JUDGE BURTON: Seeing none,
19 Exhibits 8 and 9 are admitted.

20 (EXHIBITS 8 AND 9 WERE RECEIVED INTO
21 EVIDENCE.)

22 JUDGE BURTON: Mr. Fox, I believe
23 that Mr. Hyneman is your witness now.

24 MR. FOX: I have no questions.

25 JUDGE BURTON: Ms. Mers?

1 MS. MERS: I don't have anything. I
2 feel bad since it's your last go around.

3 JUDGE BURTON: Mr. England?

4 MR. ENGLAND: I do not have any
5 questions either, but I don't feel bad.

6 JUDGE BURTON: Any questions from the
7 Commission?

8 COMMISSIONER STOLL: I hate to say
9 it. I have no questions.

10 JUDGE BURTON: Well, thank you very
11 much, Mr. Hyneman. You are excused.

12 Public Counsel, you may call your
13 next witness.

14 MS. SHEMWELL: Public counsel calls
15 Mr. Riley.

16 (Witness sworn.)

17 JOHN S. RILEY testified as follows:

18 DIRECT EXAMINATION BY MS. SHEMWELL:

19 Q. Mr. Riley, would you state your name
20 and spell your name for the court reporter, please.

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

22 Q. Is your middle initial actually wrong
23 on your rebuttal testimony cover sheet?

24 A. That would be one of my corrections.

25 Q. So it's John S. Riley. Mr. Riley,

1 **where do you work?**

2 A. I work for the Office of Public
3 Counsel as a Utility Accountant 3.

4 **Q. Did you prepare testimony that we**
5 **will mark as Exhibit 10?**

6 A. Yes, I have.

7 **Q. That's your rebuttal testimony,**
8 **correct?**

9 A. That's correct.

10 **Q. Do you have corrections?**

11 A. Yes, I do. On the cover, the John R.
12 Riley should be John S. Riley. On page 3, line 21,
13 it reads FERC and NARUC. The A should be a C.

14 On page 6, line 6, the sentence
15 reads, normal accounting requirements and also
16 deviate from the accounting requirements. It
17 should read from the normal accounting
18 requirements.

19 Page 9 in footnote No. 1, the case
20 referred to is GU-2005-0095. I mistakenly left out
21 a zero. And that's all of my changes.

22 **Q. Thank you. Did you prepare this**
23 **testimony for filing with the Commission?**

24 A. Yes, I did.

25 **Q. And with the changes that you've**

1 **made, if you were asked the same questions today,**
2 **would your answers be substantially the same?**

3 A. Yes, they would.

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

6 A. Best of my knowledge and belief.

7 MS. SHEMWELL: Thank you, Mr. Riley.
8 Judge, I would offer Exhibit No. 10 into evidence
9 and tender the witness for cross.

10 JUDGE BURTON: Thank you. Are there
11 any objections to the admission of Exhibit 10?

12 MR. ENGLAND: No questions, your
13 Honor, or no objections. I may have no questions,
14 too.

15 JUDGE BURTON: Seeing no objections,
16 Exhibit 10 is admitted.

17 (EXHIBIT 10 WAS RECEIVED INTO
18 EVIDENCE.)

19 JUDGE BURTON: And, Mr. Fox, your
20 witness.

21 CROSS-EXAMINATION BY MR. FOX:

22 Q. **Mr. Riley, you are a tax expert; is**
23 **that correct?**

24 A. Yes, I am.

25 Q. **Okay. As a tax expert, would you see**

1 that St. Louis County's going from a 7-year
2 recovery period to a 20-year recovery period as an
3 extraordinary event?

4 A. No, I don't find that extraordinary.

5 Q. Why?

6 A. Well, it's my understanding that the
7 change from 7 years to 20 years was a -- not a
8 change in methodology, it was a change in
9 recognition. So I don't find it to be an
10 extraordinary event.

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

13 JUDGE BURTON: Staff?

14 CROSS-EXAMINATION BY MS. MERS:

15 Q. Good afternoon, Mr. Riley. How are
16 you doing?

17 Do you believe increases in property
18 taxes are unusual or nonreoccurring?

19 A. I don't find them to be unusual, no.

20 Q. Do you believe changes in taxing
21 methodologies are unusual or nonreoccurring?

22 A. I don't find them to be unusual.

23 Q. Okay. Are you familiar with the
24 surrebuttal testimony of Missouri-American witness
25 Brian LaGrand?

1 A. Yes, I am.

2 Q. Could you turn to page 8, please?

3 A. Yes, ma'am.

4 Q. So it seems like Mr. LaGrand takes
5 issue with OPC's treatment of the Platte County
6 taxes, and Staff's as well, at lines 1 through 11,
7 stating that OPC has not justified viewing the
8 changes in Platte County taxes in isolation.

9 Do you view the Platte County taxes
10 and St. Louis County taxes, those increases as
11 separate events?

12 A. Well, they're both raising property
13 taxes, but I find them to be a separate -- those
14 are separate transactions, so to speak, yes.

15 Q. And it's your opinion that for an AAO
16 request an event must be both extraordinary and
17 material, correct?

18 A. Yes, I would agree with that.

19 Q. And do you agree that Missouri-
20 American cannot piecemeal a material impact from
21 one event with an unusual change in another event?

22 A. I don't think they should, no.

23 Q. Okay. So would it be your testimony
24 that St. Louis County taxes would both have to be
25 extraordinary and material to qualify for an AAO?

1 A. That is my testimony, yes.

2 Q. And it's your view that St. Louis
3 County -- the St. Louis County increase is not
4 extraordinary, therefore not appropriate for an
5 AAO, correct?

6 A. Repeat that question, please.

7 Q. It's your view that the St. Louis
8 County increase is not extraordinary and,
9 therefore, not appropriate for an AAO, correct?

10 A. Yes, that's correct.

11 Q. And then likewise, would it be your
12 testimony that the Platte County tax increase must
13 both be extraordinary and have the 5 percent impact
14 on income to qualify for an AAO?

15 A. Well, one could argue that that is --
16 may possibly be extraordinary, but it is certainly
17 not material.

18 Q. Because in your -- it's not material
19 because that increase due to -- directly
20 attributable to Platte County is less than 5
21 percent impact on income, correct?

22 A. Yes, that's correct.

23 MS. MERS: Thank you. That's all I
24 have.

25 JUDGE BURTON: Mr. England?

1 MR. ENGLAND: Thank you, Judge.

2 CROSS-EXAMINATION BY MR. ENGLAND:

3 Q. Mr. Riley, in your rebuttal
4 testimony, page 3, lines 1 through 5, you reference
5 a 2016 KCPL rate case and talk about KCPL's request
6 for an expense tracker to track the annual
7 increases in property tax expense in that rate
8 case, correct?

9 A. That's correct, sir.

10 Q. And I think the gist there is that
11 you view their request for an expense tracker and
12 Missouri-American's request for an AAO insofar as
13 it impacts property taxes to be essentially the
14 same, right?

15 A. Well, I used the Kansas City Power &
16 Light instance as a reference because the question
17 is, does the increase taxes, are they unusual?
18 Well, increasing property taxes isn't an unusual
19 event. But, I mean, as KCPL would actually try and
20 request it from the Commission that there be a
21 tracker, I mean, that's -- it's just not an unusual
22 event.

23 Q. Well, first of all, wasn't KCPL's
24 proposal to set a baseline expense amount in rates
25 by use of a projected expenses for 2017 and '18 and

1 then use an asymmetrical or one-way tracker to
2 protect customers in the event future property
3 taxes are lower than the projected amount included
4 in rates?

5 A. I don't really have that in front of
6 me.

7 Q. I can show you the excerpt.

8 A. I usually -- I'm really just
9 referring to the fact that they tried to put in a
10 tracker.

11 Q. Well, let me ask you this: KCPL was
12 not seeking to recover in its property tax tracker
13 an increase in property tax due to a change in
14 assessment methodology by any of its taxing
15 authorities, right?

16 A. I believe you're correct, yes.

17 Q. Would you also agree with me that the
18 Commission never decided the issue in that case, it
19 never was presented as a contested issue?

20 A. I believe you're correct there, too.

21 MR. ENGLAND: Thank you, sir. No
22 other questions.

23 JUDGE BURTON: Thank you. We have no
24 questions from the Commission. Is there any
25 recross?

1 MR. FOX: No, your Honor.

2 JUDGE BURTON: Staff?

3 MS. MERS: No. No, thank you.

4 JUDGE BURTON: Redirect?

5 REDIRECT EXAMINATION BY MS. SHEMWELL:

6 Q. Mr. Riley, you were asked about
7 whether or not this tax increase is material. Have
8 you done any calculations concerning the
9 materiality of the proposed AAO for
10 Missouri-American Water?

11 A. Yes, I have. I answered that
12 question on page 3, line 6 through 13, and did some
13 calculations on the effect of the taxes on 2017 and
14 2018.

15 Q. Have you created a worksheet with --

16 A. For those calculations, I've created
17 a worksheet, yes, ma'am.

18 MS. SHEMWELL: I'd like this marked
19 as Exhibit 11, please.

20 (EXHIBIT 11 WAS MARKED FOR
21 IDENTIFICATION BY THE REPORTER.)

22 BY MS. SHEMWELL:

23 Q. Did you prepare this calculation,
24 Mr. Riley?

25 A. Yes, I did.

1 Q. Would you explain the results of your
2 calculation?

3 A. Yes, ma'am. What I actually did is
4 determine -- I used the exhibit sheet from
5 Mr. Wilde's original testimony to come up with the
6 tax amounts for 2017 and 2018. The reason why I
7 split them up is because we're talking about an
8 increase in both years.

9 So the -- according to Mr. Wilde's
10 calculations, we have 4,841,271 is going to be the
11 tax increase in 2017. And company witnesses have
12 mentioned that the total amount is \$7.5 million,
13 give or take. However, nobody's considered the tax
14 effect on how much -- how much tax will reduce this
15 amount as far as an expense.

16 So I worked up this sheet, came up
17 with -- put in the numbers as they show up on the
18 spreadsheets, and on 2018 I took the total amount
19 of tax, divided it by each month and put in another
20 five months because the rate case goes through May,
21 and applied the tax rate to that and then reduced
22 the amount of the property tax by the tax rate
23 effect to come up with a net tax amount that each
24 year will show actually how much it will cost the
25 company.

1 So in order to figure out if it
2 was -- if the tax, the property taxes that we're
3 talking about are material, when you come up with
4 that sort of number, as the company used the 2016
5 net income as their basis of coming up with
6 materiality, if you take the 2,982,000, divide it
7 by the net income of 47.8 million, you come up with
8 a 6 percent increase in expenses for 2007.

9 Whereas, in 2008 when you use the five months of
10 property taxes and deduct it for the taxes, the tax
11 rate then, you only come up with a 3 and a half
12 percent increase.

13 So your materiality doesn't reach the
14 5 percent threshold that normally the Commission
15 has used in past cases.

16 **Q. You meant 2017 and 2018?**

17 A. Yes, ma'am. I'm sorry. The 2016 net
18 income was the -- is the number that they used to
19 get 2017 and 2018 increases from property taxes.

20 **Q. Used for what? You said that was the**
21 **net income they used to calculate the property**
22 **taxes.**

23 A. No. They used the \$47.8 million to
24 determine whether or not it would be a significant
25 increase on the company's expenses, the materiality

1 of whether or not the -- materiality portion of
2 whether or not this warrants an AAO designation.

3 MS. SHEMWELL: I have no further
4 questions and move for admission of Exhibit 11.

5 MR. ENGLAND: May I inquire before
6 I --

7 JUDGE BURTON: Yes.

8 MR. ENGLAND: -- have an objection or
9 not?

10 Is this exhibit meant to update and
11 sort of refine similar numbers appearing in
12 Mr. Riley's rebuttal testimony on page 3, line 9?

13 THE WITNESS: Yes, it is.

14 MR. ENGLAND: I have no objection.

15 It might have been nice if we'd seen this in direct
16 examination so we could have some cross on it. If
17 that's all it's doing, I have no objection.

18 JUDGE BURTON: Any other?

19 MR. FOX: No, your Honor.

20 JUDGE BURTON: All right. Exhibit 11
21 will be admitted.

22 (EXHIBIT 11 WAS RECEIVED INTO
23 EVIDENCE.)

24 JUDGE BURTON: That is all that we
25 have for you, Mr. Riley. You may be excused.

1 We're now ready for St. Louis County
2 to present its witness.

3 (Witness sworn.)

4 SUZANNE STRAIN testified as follows:

5 DIRECT EXAMINATION BY MR. FOX:

6 **Q. Would you state your full name for**
7 **the Commission.**

8 A. Suzanne Strain.

9 **Q. And would your spell your last name,**
10 **please.**

11 A. S-t-r-a-i-n.

12 **Q. And by whom are you employed?**

13 A. I'm employed by St. Louis County.

14 **Q. Okay. And the assessor's office?**

15 A. Yes, I work in the assessor's office.

16 **Q. What is your job title?**

17 A. I'm the personal property appraisal
18 manager.

19 **Q. Okay. What are your duties?**

20 A. I'm in charge of the assessment of
21 the personal property located in St. Louis County.

22 **Q. And have you prepared rebuttal**
23 **testimony for St. Louis County in the matter of**
24 **Missouri-American Water Company's application for**
25 **Accounting Authority Order related to the property**

1 **taxes in St. Louis County and Platte County?**

2 A. Yes, I have.

3 Q. **Has this testimony been marked as**
4 **St. Louis County's exhibits, Exhibits 12, 13, 14,**
5 **15 and 16?**

6 A. Yes.

7 Q. **To the best of your knowledge?**

8 A. To the best of my knowledge.

9 Q. **That includes the rebuttal testimony**
10 **with the four exhibits.**

11 JUDGE BURTON: Those were marked as
12 Exhibits 1, 2 and 3 when they were submitted.

13 MR. FOX: Well, 1, 2, 3 and 4, your
14 Honor. 1 and then there were three e-mails. But
15 you're right, they were marked differently, and I
16 apologize. I think it was 1-A was the rebuttal
17 testimony, and then Exhibits 1, 2, 3 and 4; 1 being
18 the Missouri Water Company property tax worksheet,
19 and the last three exhibits being again e-mails.
20 Do you see that, your Honor?

21 JUDGE BURTON: So we're on the same
22 page, I would have it marked as Exhibits 12, the
23 written rebuttal testimony of Suzanne Strain that
24 was received on October 20th, 2017 in the
25 Commission's data center.

1 And then I believe we next have what
2 would have been Exhibits 1, which I believe starts
3 with the Joseph Sansone correspondence.

4 MR. FOX: Well, I think actually the
5 Exhibit 1 is the worksheet, I think, of the Joseph
6 Sansone -- yeah, the Missouri Water Company that
7 was submitted by Sansone.

8 JUDGE BURTON: Which is identified on
9 the top as received April 28, 2017 from the
10 assessor's office in St. Louis County?

11 MR. FOX: That is correct.

12 JUDGE BURTON: Why don't we have that
13 marked as Exhibit 13.

14 MR. FOX: Okay.

15 JUDGE BURTON: Then we have the
16 e-mail from Suzanne Strain to Tammy Frost from
17 May 30th, 2017.

18 MR. FOX: That would be 14?

19 JUDGE BURTON: Yes.

20 MR. FOX: And then Exhibit 15 would
21 be the e-mail from Tammy Frost to Elizabeth.

22 JUDGE BURTON: Yes. It's marked up
23 at the top as page 1 of 1, St. Louis County 1-003
24 Attachment 1.

25 MR. FOX: That's correct, your Honor.

1 And then 16 would be the e-mail from Suzanne Strain
2 to Tammy Frost dated --

3 JUDGE BURTON: On June 6th?

4 MR. FOX: That's correct.

5 JUDGE BURTON: Are all the parties
6 clear on those identifications we just discussed?

7 MS. SHEMWELL: I could use a little
8 more description of 14, please.

9 JUDGE BURTON: This would be -- and
10 correct me if I'm wrong, Mr. Fox.

11 MR. FOX: This would be the e-mail
12 from Suzanne Strain to Tammy Frost dated Tuesday,
13 May 30th, 2017.

14 JUDGE BURTON: And it's only one
15 page.

16 MR. FOX: Correct, it's only one
17 page. Each of the e-mails are one page.

18 Sorry for the confusion. At this
19 time I'd move to have the exhibits offered and
20 accepted into evidence.

21 JUDGE BURTON: Exhibits 12, 13, 14,
22 15 and 16 have been offered. Are there any
23 objections?

24 MR. ENGLAND: No objections.

25 JUDGE BURTON: All right. Seeing no

1 objections, Exhibits 12 through 16 are admitted.

2 (EXHIBITS 12 THROUGH 16 WERE RECEIVED
3 INTO EVIDENCE.)

4 JUDGE BURTON: And I believe,
5 Ms. Shemwell, this is your witness.

6 CROSS-EXAMINATION BY MS. SHEM WELL:

7 **Q. Ms. Strain, you said you work for the**
8 **county assessor's office in what unit?**

9 A. I'm in the personal -- the assessor's
10 office in the personal property.

11 **Q. Could you clarify whether or not as**
12 **defined in Chapter 137 under definitions of real**
13 **property, do you consider that personal property**
14 **for purposes of your assessments?**

15 A. The type of property that is
16 discussed in this case is personal property that is
17 assessed as real estate. So it's considered
18 non-parcel real estate, the distributable property.

19 **Q. It's non-parcel because it is**
20 **distribution lines?**

21 A. Yes. Yes. So it's the equipment
22 that's used for the actual distribution of the
23 water, be the water mains, the hydrants, and it's
24 on land that is not owned for the most case by
25 Missouri-American Water. It's all out throughout

1 the county. So, therefore, it's considered
2 personal property because it's not on real estate
3 owned by Missouri-American Water.

4 **Q. But it is assessed as if it were?**

5 A. The depreciation factor that applies
6 is based on the MACRS schedule as outlined in
7 137.122. The assessment factor is the 32 percent
8 for commercial real estate instead of 33 and a
9 third that's assigned to personal property.

10 **Q. Ms. Strain, when did the County**
11 **change from a 7 percent depreciation amount to a**
12 **20 percent?**

13 A. The statute went into effect in 2007
14 for any equipment that was purchased after -- on or
15 after January 2nd of 2006. St. Louis County went
16 to following the MACRS schedule starting in 2007.

17 **Q. How were people to know that that was**
18 **the case?**

19 A. Well, Missouri's a self-reporting
20 state, and so, therefore, it is the responsibility
21 of the business and the business owners to make
22 sure that they report following the statutes. We
23 do mail declarations to businesses, and we outline
24 the recovery periods and equipment that falls into
25 these recovery periods, but that's for personal

1 property. That's not for this type of property
2 which is actually real estate that's assessed as
3 personal property.

4 Q. What --

5 A. Very confusing.

6 Q. So the declaration that they're to
7 complete you mail to them?

8 A. Yes.

9 Q. But it's not specific about this
10 personal property that's looked at as real estate?

11 A. No, it's not. There's only two
12 companies that St. Louis County assesses that have
13 distributable property. One is Laclede Gas, and
14 the other one is Missouri-American Water. All your
15 other utilities that have distributable property,
16 Ameren, Southwestern Bell, those are all -- their
17 distributable property is state assessed. It's not
18 locally assessed.

19 So the State Tax Commission, the
20 original assessment section of the State Tax
21 Commission assesses their property, and we only
22 locally assess their office furniture, vehicles,
23 that type of equipment. But as far as this type of
24 property, the only two companies are, like I said,
25 Laclede Gas and Missouri-American Water.

1 Q. Do you know how Laclede Gas has been
2 reporting their distribution property to --

3 A. Laclede reports using a 20-year
4 recovery period.

5 Q. And you're comparing them because
6 they both have distribution lines that are on
7 someone else's property, underground, and in this
8 case moving natural gas or water?

9 A. Correct.

10 Q. What is your responsibility to assure
11 that these are correct? I'm sorry. Let me say
12 these, I'm talking about the declaration pages, to
13 assure that they are correctly reported.

14 A. Well, in the case of Missouri-
15 American Water, if you look at the very first
16 exhibit, which is Sansone's reporting of their
17 non-parcel real estate, if you look on the Excel
18 spreadsheets that are attached that we receive,
19 you'll notice that they provide us with a breakdown
20 of each taxing district, each account number the
21 assessor's office has assigned to it, and the
22 assessed value for each of those tax districts.
23 And they also provide us the worksheets that tie in
24 to the grand totals that are included on the Excel
25 spreadsheet.

1 So in the past and, you know, as I
2 have admitted, it's something that St. Louis County
3 should have definitely have caught, that they were
4 using a seven-year recovery period and not a
5 20-year recovery period. You see that they apply
6 this assessment rate if you look on the worksheet,
7 and it's kind of misleading because instead of them
8 breaking down that this is, for example, your 2016
9 assessment, depreciation factor for a seven-year
10 recovery is 89 percent. So instead of them saying
11 89 percent and --

12 JUDGE BURTON: Would you clarify
13 which page you're looking at?

14 THE WITNESS: If you look at just the
15 very first page, the one marked Afton.

16 JUDGE BURTON: Which technically
17 would be the second page?

18 THE WITNESS: Yes, second page. I'm
19 sorry. If you look at the very first column, it
20 has 2016, and I think this goes to one of your
21 earlier questions, Mr. Kenney. When they report,
22 they are supposed to report the original cost and
23 the year that it was acquired. So for 2016 in the
24 Afton district, they're saying this is how much
25 they paid for these types of equipment that they

1 purchased in 2016. The grand total is the
2 3,674,215. Then they have this assessment rate
3 that they have applied.

4 Now, normally on our declarations it
5 would have the actual depreciation factor and
6 assessment rate, two different numbers. It would
7 have for seven-year property, the 2016 would be
8 89 percent. So you would see 89 percent and then
9 normally on the declaration 33 and a third.

10 But instead they have used an
11 assessment rate which you have to kind of back into
12 to find out how they came up with this rate. So
13 they took the 89 percent and they divided it by
14 32 percent and that's how they came up with this
15 .2848. And then they applied that rate to the
16 total, and that's how they come up with the
17 assessed value.

18 So just looking at this, when you've
19 got 40,000 business accounts that you're
20 responsible for, you just assume, unfortunately,
21 that the rate that they are using covers the
22 correct recovery period. And like I said, it was
23 not until this year that I realized that this does
24 not -- first of all, my fault, there's not 20 years
25 worth of columns in here. There's only seven years

1 of -- or seven years worth of figures here, that
2 this is not the correct recovery that they are
3 reporting.

4 So as a self-reporting utility, we
5 accepted the information that they gave us without
6 double checking to make sure that it was the
7 correct information.

8 MS. SHEMWELL: They may have some
9 questions for you at some point. I think that's
10 all I have for you.

11 JUDGE BURTON: Staff?

12 CROSS-EXAMINATION BY MS. MERS:

13 **Q. Good afternoon, Ms. Strain.**
14 **St. Louis County is not changing how taxes are**
15 **assessed, correct?**

16 A. No, we're not. We're just making
17 sure they're going to report using the correct
18 recovery period.

19 **Q. So it's just rectifying a mistake**
20 **that was made in calculation?**

21 A. Yes.

22 **Q. And the 20-year recovery period,**
23 **that's set out in the modified accelerated cost**
24 **recovery system in the federal IRS code; is that**
25 **correct?**

1 A. That's where the class life is
2 determined, yes. That's not where -- the statute
3 determines the depreciation factor.

4 Q. Okay. And you stated in your
5 rebuttal testimony, I believe it was in question
6 10, that you called once you were made aware of
7 this issue to verify the other counties that
8 Missouri-American operates in were using a 20-year
9 recovery period, correct?

10 A. Yes.

11 Q. And they responded that, yes, they
12 indeed were using a 20-year recovery period,
13 correct?

14 A. Yes, and had been for years.

15 Q. And you rely on Missouri-American to
16 self report correctly?

17 A. That's correct.

18 Q. And would it be fair to say that one
19 of the reasons behind the burden being on the
20 utility to self report correctly is by the nature
21 of the size of their operation and the fact that
22 Missouri-American is presumably reporting taxes on
23 the same types of assets at the same rate in 24
24 counties, that Missouri American's a fairly
25 sophisticated entity?

1 A. Yes, that's true.

2 Q. And just to confirm, there was no
3 arrangement made from your office with
4 Missouri-American to use a seven-year recovery
5 period instead of the 20; is that correct?

6 A. Not that I was aware of, no.

7 Q. And no utility has any kind of
8 arrangement like that, correct?

9 A. No.

10 Q. And I guess my final question is, to
11 your knowledge, has Missouri-American appealed the
12 assessed values?

13 A. They did not appeal with the Board of
14 Equalization. I do not know if they have appealed
15 with the State Tax Commission.

16 MS. MERS: Okay. Thank you. Nothing
17 further.

18 JUDGE BURTON: Mr. England?

19 MR. ENGLAND: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. ENGLAND:

21 Q. Good afternoon, Ms. Strain. You
22 indicate that you are the manager of the personal
23 property department with the St. Louis County
24 Assessor's Office since November of 2013. Do you
25 have any prior experience or employment with that

1 office?

2 A. Yes. I've been in the assessor's
3 office for about 15 and a half years.

4 Q. In what capacity prior to your
5 current position?

6 A. Well, I started out just as a regular
7 office worker, and then I was supervisor in the
8 leased vehicle and the business section and then
9 was promoted to manager.

10 Q. I guess more specifically in the
11 period, say, between 2007 and 2013, what would your
12 function or position have been?

13 A. My primary duties during that time
14 were the assessment of the leased vehicles that are
15 in St. Louis County, but also we all have to work
16 with all the different businesses. Like I said, we
17 have over 40,000 businesses that report personal
18 property in St. Louis County, and so the whole
19 staff is responsible for also working business
20 personal property declarations.

21 Q. Are you familiar then with the law as
22 it preceded 2007 and the adoption of the MACRS
23 class lives?

24 A. Yes. Uh-huh.

25 Q. Would you agree with me that there

1 was no statutory requirement, if you will, guidance
2 to use a seven-year or any particular year prior to
3 2007 for this property?

4 A. Prior to 2007, the way I understand
5 it is -- I can only say what St. Louis County did.
6 What I understand is that any county assessor could
7 assess using whatever factors that they wanted to,
8 and that's why the statute was enacted to make it
9 fair and equitable across the state.

10 Q. So it's possible that other counties
11 could have already been assessing this type of
12 property at 20 years prior to the law change in
13 2007?

14 A. That's possible, yes.

15 Q. I think you also mentioned that one
16 of the reasons you didn't catch this earlier was
17 because you have 40,000 business returns; is that
18 right?

19 A. Yes. Uh-huh.

20 Q. But if I understand your testimony
21 here today, there's only two companies that file
22 these types of return or have this type of property
23 that's, I don't know if specially assessed is the
24 right word, but it's certainly unique in that it's
25 real property but treated as personal property?

1 A. Yes. Uh-huh.

2 Q. So there's just the two returns that
3 you could be looking at, right? I mean, it's not
4 like -- if you're really interested in making sure
5 they're using the right recovery period, the only
6 two to worry about would be Laclede and
7 Missouri-American?

8 A. As far as 20-year property?

9 Q. As far as self-reporting utilities.

10 A. Any business in Missouri is a
11 self-reporting -- is self-reporting.

12 Q. Okay. So then Missouri-American's
13 not unique in being a self-reporting entity?

14 A. No. The only thing that is unique
15 about Missouri-American Water is the fact that they
16 have distributable property that is personal
17 property that's assessed using a real estate
18 assessment factor.

19 Q. Okay. And Laclede's the only other
20 entity in your jurisdiction in that position?

21 A. Yes.

22 Q. What about Metropolitan Sewer
23 District?

24 A. Metropolitan Sewer District?

25 Q. MSD.

1 A. They are -- they don't pay taxes in
2 St. Louis County.

3 Q. So according to Ms. Shemwell, they're
4 **shortchanging the taxpayers of --**

5 MR. FOX: Object to that question.
6 Again, MSD is a political subdivision of the state
7 of Missouri, and so it is not liable to be paying
8 taxes. So it's not shortchanging anybody.

9 JUDGE BURTON: I'm going to overrule
10 that objection. You'll have a chance to redirect.
11 BY MR. ENGLAND:

12 Q. And I apologize for using the
13 **pejorative term that Ms. Shemwell used in her**
14 **opening statement, but the point is they're not**
15 **paying taxes to St. Louis County, correct, property**
16 **taxes, on their distributable property?**

17 A. Metropolitan Sewer District?

18 Q. Uh-huh.

19 A. No.

20 Q. Would that also be the same with
21 **smaller water and sewer utilities in the St. Louis**
22 **County area that are either homeowner owned,**
23 **subdivision owned, perhaps municipally owned?**

24 A. I am not aware -- anything that's
25 owned by a municipality would be exempt from taxes.

1 Q. Okay. Under the same theory that MSD
2 is, that they're governmental entities and not
3 subject to property tax?

4 A. Correct.

5 Q. If they were to be acquired by a
6 private corporation like Missouri-American, then
7 they would become subject to property tax, correct?

8 A. Correct.

9 Q. And that would be a benefit to the
10 taxpayers?

11 MR. FOX: Objection. This is all
12 speculation, your Honor.

13 MR. ENGLAND: Well --

14 THE WITNESS: I can't answer that. I
15 don't know.

16 MR. ENGLAND: No more speculation
17 than what Mr. Fox was getting into regarding the
18 inability of the county or the school districts
19 within the county to get certain revenues if
20 Missouri-American had not paid -- or had paid at a
21 higher level.

22 JUDGE BURTON: I will allow the
23 questioning, but I would say let's move on and not
24 attempt to retaliate through cross-examination.

25 MR. ENGLAND: I understand. Thank

1 you.

2 BY MR. ENGLAND:

3 Q. You mentioned that Laclede Gas is at
4 the 20-year recovery period?

5 A. Yes, they are.

6 Q. When did they go to 20 years?

7 A. I don't know exactly when, but I have
8 been assessing their account for four years, and
9 they've always been at 20 years since I have done
10 it.

11 Q. But you don't know if they went in
12 2007 or maybe just the year before you started
13 reviewing their return, correct?

14 A. We're only required to keep five
15 years' worth of returns. So I have no clue what
16 they would have done prior to 2012.

17 Q. Your Honor, just a minute. Some of
18 my questions I believe have previously been asked
19 by Ms. Shemwell.

20 If a manufacturing business located
21 in St. Louis County had internal either water or
22 wastewater facilities for its own business
23 purposes, how would they be assessed, on a 7, 20 or
24 what year recovery period, if you know?

25 A. It really depends on the type of

1 manufacturing business it is. The recovery periods
2 that we use, the class lives that we use are based
3 on what the business does as an overall business.
4 So say, for example, if you have a car
5 manufacturer, the majority of their equipment is
6 going to be in the class life for car
7 manufacturers, which I have no idea off the top of
8 my head what that is, and not necessarily -- if
9 they also happen to have a water treatment facility
10 in their plant, their main business is making cars,
11 not treating -- not water treatment. So their
12 equipment would be probably assessed based on what
13 their main business is.

14 Q. So it could be different than the 20
15 years?

16 A. Yeah. There's all different class
17 lives.

18 Q. Yet their water treatment facilities,
19 whether that's for treating potable water or
20 treating wastewater, would be the very same just on
21 a smaller scale than what Missouri-American uses?

22 A. You know, I'd have to read exactly
23 what the IRS publication has as the 20-year,
24 because I -- I don't know exactly off the top of my
25 head exactly what the class life reads.

1 Q. So it's possible they could be on a
2 different recovery period for their own water
3 treatment facilities?

4 A. It's possible, yes.

5 Q. I believe your counsel did have a
6 question on cross-examination regarding St. Louis
7 County not getting the revenues that it's entitled
8 to or would have gotten had Missouri-American used
9 a 20-year recovery period.

10 My question to you is, let's assume
11 that in 2017 St. Louis County is going to get an
12 additional 4 million plus dollars in property tax
13 revenue from Missouri-American. Does that mean in
14 2018 tax rates stay the same for all taxpayers or
15 is it my understanding that they actually -- all
16 other things being equal, they get rolled back so
17 the total revenues for the county do not increase
18 by a certain amount, if you understand my question?

19 A. The way I understand tax rates to
20 work, and this is just a basic understanding, we
21 provide assessments to all the different taxing
22 authorities. We provide what the assessed values
23 are for all the personal property, all the real
24 estate, all of the non-parcel real estate.

25 All those numbers are provided to the

1 separate taxing authorities, which would be your
2 fire districts, your school districts, special
3 school district. They know how much they have in
4 assessed value that they're counting on. They know
5 what their budget is, and their tax rates are based
6 on the assessments and how much -- how much in
7 taxes they have to charge on those assessed values
8 to get to their budget amount. That's my
9 understanding.

10 I don't -- I know there's something
11 about rolling back taxes, but I -- I don't know
12 anything about it.

13 Q. I guess it's not so much rolling
14 back, but my understanding is that they're -- that,
15 for example, those school districts are sort of
16 limited, whether it's by their budget or their
17 assessment amounts, in how much revenue they can
18 get. So even if there is a windfall increase in
19 property tax revenues, there is sort of some
20 offsetting calculation that brings that back to
21 where they're supposed to be.

22 A. Since I don't set tax rates, all I
23 can tell you is we provide the assessed values, and
24 when there is a noticeable difference in assessed
25 values in school districts or fire districts, that

1 I receive phone calls asking what happened to this
2 particular manufacturing plant, for example, why
3 did their assessment go from 4 million to
4 2 million. So that is -- they look closely at the
5 assessed values to determine their tax rates.

6 Q. You're not aware of any adjustment
7 that either your agency or the school district has
8 to make to bring them back, bring the revenues back
9 into line with either what they've budgeted or what
10 they've been authorized by the voters to --

11 A. I have no clue. I don't know.

12 Q. Hopefully one final question,
13 Ms. Strain. Do you understand that the outcome of
14 the Accounting Authority Order case, this case
15 here, will not have any impact on the property tax
16 that's paid by Missouri-American to St. Louis
17 County Water (sic), or is your understanding
18 different?

19 A. No. I understand that. I don't --
20 whatever the accounting authority is has nothing to
21 do with the property taxes, as far as I'm
22 concerned, as far as I know.

23 Q. Right. I mean, a grant of the
24 Accounting Authority Order won't impact our
25 liability to you?

1 A. No.

2 MR. ENGLAND: Thank you. No other
3 questions.

4 QUESTIONS BY JUDGE BURTON:

5 Q. Ms. Strain, I have a few questions,
6 and it's going to be for the record an explanation
7 of the use of class life and assessments. So I
8 would just like you to explain to me first and
9 foremost, what is the definition of distributable
10 property?

11 A. Distributable property. Okay. So --

12 Q. Is that something that's found in a
13 statute or regulation?

14 A. I don't know if it's necessarily
15 found in the statute, but I think it's -- in the
16 Code of State Regulations for original assessment,
17 it talks about distributable property, and --

18 Q. Which chapter is that?

19 A. Chapter -- I have it at my --
20 Chapter -- I want to say Chapter 30, but I could be
21 wrong. That's where they discuss the distributable
22 assets in that natural gas companies and water
23 companies are locally assessed and not state
24 assessed.

25 So I think years and years ago it was

1 determined what they would consider to be
2 distributable property would be like the water
3 mains, the hydrants, the lines, the meter -- well,
4 I don't know about the meters. Basically, it's the
5 equipment that they have listed on these
6 worksheets. That's the equipment that's considered
7 distributable property. That's the property that's
8 used in the distribution of the actual water.

9 **Q. Okay. Now, how does that play into**
10 **determination for the class life?**

11 A. Okay. So the class life is
12 determined by use of the MACRS schedule, and the
13 MACRS schedule says that this type of equipment for
14 water companies is considered 20-year class life.

15 **Q. And that's put out by the IRS?**

16 A. The IRS, yes.

17 **Q. And there's a publication for that,**
18 **correct?**

19 A. Yes, 945 or 946.

20 **Q. 946?**

21 A. Yes.

22 **Q. So that's what you would use as an**
23 **assessor to make a determination for the class life**
24 **of this type of property?**

25 A. Yes.

1 **Q. And so based off of the MACRS, you**
2 **would use a table from that publication?**

3 A. Yes, we would use the table.

4 **Q. Which table would you use?**

5 A. There's a table of class lives, and
6 then there's another one that's called the recovery
7 period. It's class life by type of equipment, and
8 then there's another table that is based on what
9 the equipment is actually used for. So if -- it's
10 kind of like Table A and Table B. I can't remember
11 exactly what they're called.

12 So if you look on Table A, if it's
13 not in Table A then you look on Table B, and then
14 that's where it gives you like assets used in the
15 manufacturing of woven material and assets used in
16 railroads and, you know, the different types of
17 activity that are used.

18 **Q. So at some point before you started**
19 **in your position in 2012, I believe --**

20 A. Uh-huh. 2013.

21 **Q -- the county assessor for St. Louis**
22 **made that determination based off of that class**
23 **life in the IRS schedule?**

24 A. Yes. Uh-huh.

25 **Q. Okay. And you don't know or you**

1 **don't recall which specific table from that IRS**
2 **publication?**

3 A. Well, yeah. It's the -- well, I
4 guess I don't understand your question.

5 Q. I'm trying to figure out, would the
6 **assessment value have changed based off of the**
7 **federal MACRS calculation or table?**

8 A. Would it have changed if they'd been
9 using the 20-year instead of the seven-year?

10 Q. **Yes.**

11 A. Yes, definitely.

12 Q. **Can you explain why?**

13 A. Okay. Well, a seven-year is -- the
14 depreciation factor is like 89, 70, 55, 30, 18. I
15 don't know exact numbers, but just has six years
16 and then it bottoms out with a -- the residual
17 amount is 10 percent.

18 With a 20-year, you have actually 17
19 different years. It starts at 90-something percent
20 and it goes all the way to the bottom depreciation
21 is 20 percent. So it never goes as low as
22 10 percent, and it takes 17 years to get to that
23 point. So, therefore, for 17 years they're hardly
24 experiencing any depreciation at all on the
25 equipment.

1 **Q. Would all county assessors be bound**
2 **by that same federal IRS MACRS?**

3 A. For any equipment that is purchased
4 January 2nd of 2006 and after, yes.

5 **Q. So based off of that, then, would**
6 **there be any reason why there would be a difference**
7 **in how property is assessed, Missouri-American's**
8 **property is assessed by the different 23 counties?**

9 A. Not for anything that was purchased
10 after January 2nd of 2006. Everything should have
11 been assessed the same.

12 **Q. Have you been made aware that Platte**
13 **County was looking to assess based off a 50-year or**
14 **looking to change that?**

15 A. Yeah, I was aware, but after the
16 fact, yes.

17 **Q. How is that allowed?**

18 A. Well, I don't know if it is. I mean,
19 I know that they've appealed to the STC. So I
20 understand Platte County's logic in the 50-year.

21 **Q. Could you explain that to me?**

22 A. Well, I mean, you're looking at water
23 pipes that are underground, and we know they've
24 been there forever. They've been there for 50
25 years. They even advertise that the life of the

1 water pipe is 50 to 100 years once it's in place.
2 So I can see where they can think that it has a
3 50-year class life.

4 COMMISSIONER KENNEY: So you can keep
5 taxing it longer.

6 THE WITNESS: They're going to tax it
7 no matter what. It's just the rate.

8 BY JUDGE BURTON:

9 Q. But under 137.122, subsection 2,
10 aren't they bound by the definition of class life
11 in the IRS MACRS?

12 A. Well, it would seem that they are,
13 but, you know, they can -- they have -- the
14 assessors have some discretion when it comes to
15 assessing the property. And then if the taxpayer
16 appeals, like Missouri-American Water does, you
17 know, Missouri-American Water has to present their
18 case on why they feel that, you know, the assessor
19 is incorrect.

20 Q. So does the assessor have the
21 discretion then to say instead seven years instead
22 of 20?

23 A. The assessor, yes, they do.

24 Q. Okay. And that's by a regulation
25 under Chapter 30?

1 A. They do, but I -- they normally
2 wouldn't, just like we shouldn't have, because it's
3 the tax dollars that the county would be losing out
4 on.

5 Q. I'm looking over your e-mail -- let
6 me see if I can find it -- where there's the
7 discussion of -- to Ms. Frost on May 30th, 2017
8 where you said, I know we have accepted seven years
9 in the past, but this was an oversight.

10 A. Yes.

11 Q. Can you explain that to me? What did
12 you mean by that?

13 A. We should never have accepted it. We
14 should not have accepted the seven-year. We should
15 have -- as far as I'm aware, we should have went --
16 or they should have been reporting using the
17 20-year.

18 Q. It says, I know we have accepted.

19 A. Yes.

20 Q. So when did you realize that they'd
21 been accepting it or that the County had been
22 accepting it?

23 A. When I went to process their
24 assessments for this year, that's when I realized
25 that the assessments were incorrect, that they were

1 reporting using seven years instead of 20 years.

2 Q. And you don't know when -- sorry. I
3 don't mean to interrupt.

4 A. And also I was going to say that
5 there was -- in the past several years, there were
6 some STC cases specifically involving Ameren and
7 Laclede Gas and their natural gas distribution that
8 came to light where these utilities, you know, huge
9 utilities are underreporting their assets in the
10 different counties.

11 So when I received Laclede Gas'
12 reporting this year, I did -- I looked over it very
13 thoroughly, made sure everything was, you know,
14 20 years. And when I went to do Missouri-American
15 Water, I realized that they were not using the
16 20-year reporting.

17 Q. Was there a reason why you were
18 looking at it this year where you haven't in the
19 past?

20 A. Yeah. Like I said, there's those STC
21 decisions. They just came to light within the last
22 year, and that made us realize that we need to be
23 looking closer at these large corporations to make
24 sure that they're properly reporting. Because they
25 are self-reporting, we have -- we really have no

1 way of knowing if the information that they give us
2 is actually their cost. We have to trust that the
3 taxpayer is telling us the truth.

4 Q. And the County isn't alleging that
5 there was any malfeasance that was intentional on
6 the part of Missouri-American, correct?

7 A. No. No. From the e-mail between
8 Tammy and Karen, I think -- I mean, neither one of
9 them are here, so I don't know what they really
10 meant to say. And to me, Tammy is saying should we
11 use the new MACRS schedule, and Karen is saying,
12 yes, you should. Why that was not followed
13 through, I don't know.

14 Q. Could you just describe a little bit
15 about your educational background?

16 A. Nothing. I just --

17 Q. I just don't think we have it on the
18 record.

19 A. I don't have any. No. Just went to
20 high school. I don't have any kind of degree.
21 Never went to college. Just everything I've done
22 has been learned while on the job.

23 JUDGE BURTON: All right. Thank you.
24 I don't have any further questions for you. Thank
25 you for coming here, and we'll see if there's any

1 recross based off of questions from the Bench.

2 Ms. Shemwell?

3 RECROSS-EXAMINATION BY MS. SHEMWELL:

4 Q. Just one clarification about the
5 distribution property that we're talking about.

6 A. Uh-huh.

7 Q. In definitions of 137, under real
8 property it specifically describes -- do you need a
9 copy of that?

10 A. No. I have a copy.

11 Q. -- as real property stationary
12 property used for transportation of, storage of
13 liquid and gaseous products, including but not
14 limited to petroleum products, natural gas, propane
15 or LP gas, equipment, water and sewage?

16 A. Correct.

17 Q. So they specifically defined this
18 distribution equipment as --

19 A. Yes.

20 Q. -- real property?

21 MS. SHEMWELL: Thank you.

22 JUDGE BURTON: Staff?

23 MS. MERS: No, thank you.

24 JUDGE BURTON: Missouri-American?

25 MR. ENGLAND: Thank you, but no

1 questions.

2 MR. FOX: No questions, your Honor.

3 JUDGE BURTON: Well, thank you very
4 much, Ms. Strain. You are excused.

5 I believe that concludes the
6 evidentiary portion of the hearing, and we'll just
7 address some procedural matters. I want to go over
8 the list of exhibits that were offered and admitted
9 to make sure we are all on the same page. I don't
10 see anything as being left off. We have Exhibits 1
11 through 16 as being offered and admitted.

12 MR. ENGLAND: I agree. That's only
13 me, though.

14 JUDGE BURTON: That's all I need.
15 Let me know if anyone else's list is different than
16 that.

17 We also are planning on having a copy
18 of the transcript available on Monday. So as
19 delighted as I'm sure you all are to review this
20 over the weekend, you will have to just wait. We
21 do have our briefing schedule. I don't believe
22 that there's any need to change the schedule that
23 we've already set. Is there anything else we need
24 to address while we're still on the record?

25 All right. Well, thank you,

1 everyone, and I hope you have an enjoyable day. We
2 are now off the record.

3 (WHEREUPON, the evidentiary hearing
4 concluded at 2:50 p.m.)

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1	I N D E X	
2	Opening Statement by Mr. England	6
	Opening Statement by Ms. Mers	15
3	Opening Statement by Ms. Shemwell	20
	Opening Statement by Mr. Woodsmall	26
4	Opening Statement by Mr. Fox	28
5	MISSOURI-AMERICAN WATER'S EVIDENCE:	
6	JOHN R. WILDE	
	Direct Examination by Mr. England	35
7	Cross-Examination by Mr. Fox	38
	Cross-Examination by Mr. Mers	45
8	Cross-Examination by Mr. Smith	46
	Questions by Commissioner Kenney	51
9	Questions by Judge Burton	57
	Recross-Examination by Ms. Mers	70
10	Recross-Examination by Mr. Fox	72
	Redirect Examination by Mr. England	73
11	BRIAN LAGRAN	
12	Direct Examination by Mr. England	76
	Cross-Examination by Mr. Fox	79
13	Cross-Examination by Ms. Mers	86
	Cross-Examination by Ms. Shemwell	87
14	Questions by Commissioner Kenney	93
	Questions by Judge Burton	93
15	Recross-Examination by Ms. Shemwell	97
	Redirect Examination by Mr. England	98
16	STAFF'S EVIDENCE:	
17	MARK OLIGSCHLAEGER	
18	Direct Examination by Ms. Mers	100
	Cross-Examination by Mr. Smith	101
19	Cross-Examination by Mr. England	123
	Questions by Commissioner Stoll	128
20	Questions by Commissioner Kenney	130
	Questions by Judge Burton	135
21	Questions by Commissioner Rupp	141
	Recross-Examination by Mr. Fox	145
22	Recross-Examination by Mr. Smith	146
	Recross-Examination by Mr. England	149
23	Redirect Examination by Ms. Mers	153
24	OPC'S EVIDENCE:	
25	CHARLES HYNEMAN	

1	JOHN S. RILEY	
2	Direct Examination by Ms. Shemwell	159
	Cross-Examination by Mr. Fox	161
3	Cross-Examination by Ms. Mers	162
	Cross-Examination by Mr. England	165
4	Redirect Examination by Ms. Shemwell	167
5		
	ST. LOUIS COUNTY'S EVIDENCE:	
6		
	SUZANNE STRAIN	
7	Direct Examination by Mr. Fox	171
	Cross-Examination by Ms. Shemwell	175
8	Cross-Examination by Ms. Mers	181
	Cross-Examination by Mr. England	183
9	Questions by Judge Burton	194
	Recross-Examination by Ms. Shemwell	203
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX	
2		RECEIVED
3	EXHIBIT 1	
4	Direct Testimony of John R. Wilde	38
5	EXHIBIT 2	
6	Surrebuttal Testimony of John R. Wilde	38
7	EXHIBIT 3	
8	Data Request 3	46
9	EXHIBIT 4	
10	Direct Testimony of Brian W. LaGrand	79
11	EXHIBIT 5	
12	Surrebuttal Testimony of Brian W. LaGrand	79
13	EXHIBIT 6	
14	Rebuttal Testimony of Mark L. Oligschlaeger	101
15	EXHIBIT 7	
16	Surrebuttal Testimony of Mark L. Oligschlaeger	101
17	EXHIBIT NO. 8	
18	Rebuttal Testimony of Charles R. Hyneman	158
19	EXHIBIT NO. 9	
20	Surrebuttal Testimony of Charles R. Hyneman	158
21	EXHIBIT NO. 10	
22	Rebuttal Testimony of John S. Riley	161
23	EXHIBIT NO. 11	
24	Chart - Increase in Property Tax	170
25	EXHIBIT NO. 12	
26	Written Rebuttal Testimony of Suzanne Strain	175
27	EXHIBIT NO. 13	
28	April 28, 2017 Letter from Tammy Frost, Personal Property and Non-Parcel Real Property Report	175

1	EXHIBIT NO. 14	
2	May 30, 2017 E-Mail to Tammy Frost	
	from Suzanne Strain	175
3	EXHIBIT NO. 15	
4	May 31, 2017 E-Mail to Elizabeth	
	Arriaga from Tammy Frost	175
5	EXHIBIT NO. 16	
6	June 6, 2017 E-Mail to Tammy Frost	
	from Suzanne Strain	175
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.

4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest
7 Litigation Services, do hereby certify that I was
8 personally present at the proceedings had in the
9 above-entitled cause at the time and place set
10 forth in the caption sheet thereof; that I then and
11 there took down in Stenotype the proceedings had;
12 and that the foregoing is a full, true and correct
13 transcript of such Stenotype notes so made at such
14 time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

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Kellene K. Feddersen, RPR, CSR, CCR

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EVIDENTIARY HEARING - Vol. I 11/8/2017

A				
A-r-r-i-a-g-a	99:12 140:9	148:11 152:17	195:8	198:25
94:2	absorb 131:13	160:15,16,17	add 36:10	advice 71:23
a.m 4:3	academic 13:9	171:25 193:14	added 35:25	116:24
AAO 6:22 17:22	accelerated 7:8	193:20,24	addition 7:16	advise 15:4
17:25 18:6,9	21:7 29:15	accounts 8:5,13	98:14,23	advised 14:18
18:19,22 20:5	181:23	47:9 105:24	additional 72:2	advisor 14:17
20:19,21 23:9	accept 120:14	113:12 117:6,19	91:3 96:19	advisory 107:12
23:12,13 24:21	122:25	117:23 127:21	99:2 142:8,18	affirmative
24:25 26:18	acceptable	127:23 139:5	191:12	22:23
50:10 86:20	121:24	139:17 153:7	address 5:25	afternoon
89:15 90:8	accepted 23:20	153:19 180:19	6:12 12:21,24	123:23,24
93:16 95:25	108:9 110:10	accurate 31:2	23:10 103:11	130:4 162:15
96:20,25	116:3 119:2	46:3,4	140:16 204:7	181:13 183:21
99:5 105:11,13	174:20 181:5	accurately	204:24	Afton 179:15,24
107:6,20	200:8,13,14,18	25:19 88:7	addressed 12:6	agency 113:25
115:17 116:3,7	accepting	111:7	13:2 19:14	193:7
116:8 133:16,21	200:21,22	achieve 121:19	36:8	agenda 123:6
133:23 134:24	account 8:19	acknowledge	addresses 87:11	ago 27:15 40:17
135:1 136:14	18:21 23:20	25:15	addressing	40:21 75:13
137:7,13	38:3 91:2,2	acknowledged	137:12	134:5 194:25
141:25 142:13	105:14,19	15:3	adjusting 10:16	agree 11:9 13:7
144:19 146:7	110:17 113:17,18	acquired 179:23	adjustment	18:3,17 19:11
150:9 153:15	117:1,10,21	188:5	193:6	48:8 59:4
154:5 155:7	126:4 132:8	acquisition	adjustments	86:4 89:1
156:7 163:15	138:3 151:4	31:14 41:11	49:14	103:4 106:12
163:25 164:5	154:16 178:20	67:23	administrative	107:6,8,18,21
164:9,14	189:8	acronym 7:8	6:24 64:3	110:5 111:12,16
165:12 167:9	Accountant	act 49:19,20	admission 15:13	111:21 112:23
170:2	156:2 160:3	acted 49:20	46:13 101:7	113:3,7,13
AAOs 9:4 18:21	accounted	action 102:6,9	158:13 161:11	115:21 124:14
23:10 107:18	36:13	105:5 113:25	170:4	124:20 125:1,2
111:17 115:20	accounting 1:13	114:4,6,24	admit 104:1	127:5 140:18
116:13,15	4:8 6:22 18:14	115:8 116:7,8	admitted 38:13	147:9,24
139:20 141:20	18:22 23:21	117:16 137:4	46:16 79:3	148:25 153:12
148:4,18	28:11 47:10	actions 10:19	95:1 101:12	153:16 154:11
ability 133:5	50:21,24	11:22 16:20	158:19 161:16	163:18,19
able 50:14	72:19 103:24	69:20,21	170:21 175:1	166:17 184:25
64:14 123:5	106:2 108:5	70:10 92:10	179:2 204:8,11	204:12
124:23 132:21	110:10,12,15	102:20 115:13	adopt 21:10	agreed 27:9
146:15,22	111:9 112:19,20	activities 8:17	adopted 8:4	63:11 152:19
149:23	114:9 116:5,22	activity 16:11	14:15	agreed-to 40:2
above-entitled	118:5,9,19,22	99:4 196:17	adoption	51:22
210:9	119:3 122:1	acts 9:8	184:22	agreeing 24:5
absolutely 12:4	127:18,24	actual 41:25	advance 9:19	24:23 148:3
53:19 74:21	130:18 132:4	73:19 122:8,16	advantage	agreement
	132:18 133:2,3	125:15,23	137:11	80:6
	137:8 147:21	175:22 180:5	advertise	agrees 14:3

EVIDENTIARY HEARING - Vol. I 11/8/2017

26:11 27:16 29:22 ah 129:20 ahead 4:6,14 46:10 58:7 ALARIS 1:24 alerted 66:8 alleging 202:4 allow 125:4 133:13,21 134:13 148:19 188:22 allowance 130:16 allowed 12:9 116:2 120:10 139:2 142:12 198:17 allowing 119:8 144:5 150:14 allows 151:22 alter 92:11 alternative 118:5 134:25 Ameren 22:21 119:1,15 120:3 177:16 201:6 American 1:13 2:6 12:14 42:21 43:7 57:6 94:7 130:14,22 163:20 178:15 American's 10:19 182:24 amortization 12:22,25 19:7 19:13 25:3 121:15,25 122:8,13 123:1 126:22,24 127:1,6,16,18 135:13,20,25 136:2,6,13,18 136:23 137:7 137:12 151:21 152:2,3,4,7,10	152:20 153:2 amortize 12:10 121:17 135:7 amortized 35:23 127:8 amortizing 25:5 amount 17:19 20:3 56:18 81:24 82:5,7 96:1,2,5 98:12 99:6,10 117:17 119:1 142:25 165:24 166:3 168:12,15,18 168:22,23 176:11 191:18 192:8 197:17 amounts 136:21 168:6 192:17 analysis 109:20 112:13,15 146:17 annual 16:12 50:5 103:20 137:19 165:6 annualized 26:22 82:5 answer 15:16 18:24,25 29:25 33:3 35:22 36:7 45:15 46:6 48:25 49:1,4 65:18 74:24 89:7 120:21 145:20 150:17 188:14 answered 167:11 answers 36:22 37:14 77:24 78:16 100:24 158:5 161:2 anticipated 98:11 anticipation 144:7 anybody 70:23	187:8 apologies 146:23 apologize 131:6 141:19 172:16 187:12 apparent 25:9 25:21 appeal 27:8 90:5 183:13 appealed 90:2 90:4 183:11,14 198:19 appealing 89:4 89:8,9 appeals 27:8,8 199:16 appear 37:13 77:23 78:15 144:3 157:7 158:2 appearance 4:15,18 APPEARANC... 2:1 appearing 4:20 4:25 5:7 6:19 170:11 Applicant 6:19 application 1:12 4:7 6:21 8:22 13:6 26:12 27:17 103:23 121:5 171:24 applied 168:21 180:3,15 applies 68:19 176:5 apply 15:11 31:22 67:14 119:25 125:9 154:1 179:5 applying 69:16 96:3 appraisal 171:17 appreciate 131:7 134:14	approach 45:7 108:5,7,10 125:3,6,21 156:13 approaches 108:11,13,16 118:6 appropriate 15:11 19:8 20:5 105:6 107:20 112:24 118:6,17 118:21 119:2 126:7 127:17 137:15 154:5 164:4,9 approval 132:10 134:12,24 approve 135:1 approved 19:13 140:7 approximately 7:4,5 10:11,18 98:20 156:6 April 73:21 127:2 135:8,13 136:9,19 173:9 208:24 area 115:2 187:22 arguably 129:3 argue 152:23 152:24 154:22 164:15 arguing 55:25 argument 20:1 arrangement 183:3,8 Arriaga 40:16 71:7 94:1 209:4 arriving 68:14 ASC 110:6,8 111:2,2,2,3 asked 13:1 69:1 81:8 100:23 161:1 167:6 189:18	asking 11:17 12:1 12:14 32:16 80:6 91:6 105:3 116:9 146:7 193:1 aspect 49:3 asserted 28:13 asserting 17:7 assertion 15:7 32:2 assess 19:25 30:20 31:10,21 61:8 68:13 177:22 185:7 198:13 assessed 16:21 17:14 28:16,20 31:12 41:9 54:15 58:3 64:21 65:13 67:17 69:18 83:17 141:7 175:17 176:4 177:2,17,18 178:22 180:17 181:15 183:12 185:23 186:17 189:23 190:12 191:22 192:4,7 192:23,24 193:5 194:23 194:24 198:7 198:8,11 assesses 177:12 177:21 assessing 14:1 17:3 185:11 189:8 199:15 assessment 7:1 7:6 10:10,21 11:6,18 12:17 13:23 22:13 28:24 29:8 30:10,13,17 32:6 38:4 44:19,22 68:9 70:2 81:25
--	---	--	--	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

91:5 92:11,14 95:7 98:17 103:19 166:14 171:20 176:7 177:20 179:6,9 180:2,6,11 184:14 186:18 192:17 193:3 194:16 197:6 assessments 62:23 64:12 69:15 175:14 191:21 192:6 194:7 200:24 200:25 assessor 7:12 7:15 13:25 14:5 22:15 29:23 30:5 43:21 44:22 65:4,9 66:15 68:18 74:17 81:8,13 185:6 195:23 196:21 199:18,20,23 assessor's 5:20 14:10,13 15:11 29:21 49:15 89:5 171:14,15 173:10 175:8,9 178:21 183:24 184:2 assessors 7:1 9:12 10:20 12:17 55:21 66:14 75:15 198:1 199:14 asset 23:20,23 24:4,12 48:2 48:18 52:1 72:21 86:21 90:13,24 105:1 105:4,7,11,17 105:22 106:7 108:24 111:4,16 111:18,24,25 112:23 113:9	114:7,19,23,23 115:14 116:17 116:21 117:12 119:17 120:17 120:19 138:10 148:8 149:24 157:18 assets 16:21 29:1,5 32:21 51:16 72:16,17 88:18 105:19 106:4 109:6 113:13,19,24 182:23 194:22 196:14,15 201:9 assigned 4:13 176:9 178:21 associated 111:20 Association 8:6 137:24 assume 25:7 44:3,9 63:9 88:4,14 149:11 151:25 180:20 191:10 assuming 129:9 140:25 assurance 147:16,23 148:5 assure 178:10,13 asymmetrical 166:1 attached 25:13 40:4,7 57:24 59:15 73:9 94:19 109:25 178:18 attachment 40:14 97:1 173:24 attachments 95:2 attempt 188:24 attending 6:4	attention 37:2 78:5 128:12 129:19 attorney 2:2,10 2:15 4:21 attractive 61:25 attributable 17:20 164:20 auditing 100:11 110:4 112:11 150:25 auditor 108:4 113:2 116:4 149:16,25 150:3 auditors 108:3 116:25 133:7 148:14 150:1,12 authorities 16:22 71:15 84:14 85:16 128:23 151:7 166:15 191:22 192:1 authority 1:13 4:9 6:22 12:14 17:23,25 19:22,24 28:11 50:21 62:16 103:24 108:5 110:8 114:10 115:3 147:21 171:25 193:14 193:20,24 authorization 90:18 132:4,19 134:12 authorize 50:23 91:1 authorized 119:18 126:25 193:10 available 16:23 59:20 204:18 Ave 2:15 aware 21:24 23:18 37:8	40:25 47:8 51:4 68:4 80:14 94:12,18 95:19 104:22 111:23 116:1 117:6 150:2 151:3 182:6 183:6 187:24 193:6 198:12 198:15 200:15 <hr/> B B 196:10,13 back 52:20 63:16 71:2 73:23 89:6 99:18 120:5 123:8,12 131:18 141:17 151:20 152:25 180:11 191:16 192:11 192:14,20 193:8,8 background 202:15 bad 153:9 159:2 159:5 balance 96:15 125:10 138:14 balances 125:8 ballparking 143:3 base 131:3 143:7 based 11:11 23:7 29:14 39:4,7 43:11 50:18 51:22 54:16 58:24 61:23 67:4 68:14 70:14 74:16 75:18 99:7,11 105:8 112:13 112:16 114:20 114:24 115:2 116:3 118:12,13 125:12,14 143:21 144:2	145:7 149:19 176:6 190:2,12 192:5 196:1,8 196:22 197:6 198:5,13 203:1 baseline 165:24 basic 191:20 basically 40:8 54:25 102:5 110:9 195:4 basics 140:3 basis 33:11 68:15 81:16 86:13 91:12,20 107:12 114:6 120:11 169:5 began 4:3 135:15 beginning 10:12 36:7 136:2 157:17 begins 147:4 behalf 4:20 5:1 5:7,13 6:19 26:9 63:4 belied 15:9,12 belief 36:24 100:21 106:1 116:18 161:5,6 beliefs 118:14 believe 6:15 12:24 18:8 19:12,19,21 20:3,25 22:11 24:8 25:17 26:6 34:11 35:13 38:16 44:11 45:2 49:1 59:2 62:20 64:13 66:13 67:13 77:9 78:6 79:8 87:8 90:10,11,16 91:4,15 92:1,9 95:9 97:7,7 98:19 99:21
---	---	---	---	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

100:14 101:15 103:11 104:25 104:25 109:23 110:21 116:9,16 117:9 123:18 124:8 125:13 129:2 130:24 135:19 137:21 139:4,6 141:1 142:6 150:16 153:6 158:22 162:17,20 166:16,20 173:1,2 175:4 182:5 189:18 191:5 196:19 204:5,21 believes 18:19 23:23 24:1 127:15 Bell 177:16 bells 104:2 Bench 70:14 145:8 203:1 beneficiary 83:9,11 benefit 22:25 83:18 120:7 122:19 132:24 188:9 benefits 83:19 121:15 best 19:14 36:23 47:25 49:23,24 50:14 80:21 100:20 161:5 161:6 172:7,8 better 33:3 49:4 102:21 113:16 116:6 117:5 121:22 122:20,20 123:1 beyond 142:18 big 112:20 128:17 150:22	150:24 151:11 bigger 151:15 bill 16:18 54:2 98:8 bills 86:8 97:8 binding 149:10 149:11,13 bit 49:6 96:11 107:17 121:15 126:21 140:11 144:24 202:14 blame 15:8 32:9 bleeds 117:25 blessing 132:20 board 59:5 70:2 183:13 bodies 16:23 body 17:16 62:2 62:15 book 86:20 90:17 105:13 105:19 114:6 116:21 117:7,16 120:10 149:23 151:25 152:2 booked 105:22 114:23 133:24 153:3 booking 47:10 113:19 115:14 127:6,12 152:21 153:1 books 48:18 82:23 116:2 121:21 122:18 135:7,16 136:22 bottom 146:19 197:20 bottoms 197:16 bound 198:1 199:10 Box 2:3,19 3:2 break 34:10 99:20 123:10 123:17 breakdown	178:19 breaking 179:8 Brian 47:7 48:3 48:23 75:24 76:9,10,16,20 162:25 206:11 208:7,9 brief 26:9 76:1 141:3 briefing 204:21 briefly 98:5 140:24 bring 58:8 193:8,8 brings 131:22 192:20 brought 129:19 134:22,23 Brydon 2:2 4:19 budget 192:5,8 192:16 budgeted 98:14 193:9 budgets 84:16 build 103:4,8 built 10:2 bulk 17:1 burden 27:1 68:16,20 182:19 Burton 1:16 4:4 4:12,23 5:3,10 5:14,16,24 6:2 8:19,24 15:21 15:24 19:4,15 20:6 26:6 28:4 34:7,11 34:22 37:21 38:2,7,9,12,16 38:19 45:6,9 46:11,15,21,24 51:6 57:2,4 59:22 60:8,19 70:12,16 72:4 72:12,24 73:1 73:5 75:21 76:3,7,13	78:23 79:2,7 81:8 85:9 86:17 87:1 93:24 97:14,17 97:25 98:2,4 99:15,21 100:1 101:4,7,11,15 101:20 103:1 123:3,11 124:15 134:17 135:11 145:6,10 146:1 146:6 149:5 153:7,23 155:13,18 156:15 158:15 158:18,22,25 159:3,6,10 161:10,15,19 162:13 164:25 166:23 167:2 167:4 170:7,18 170:20,24 172:11,21 173:8 173:12,15,19 173:22 174:3,5 174:9,14,21,25 175:4 179:12 179:16 181:11 183:18 187:9 188:22 194:4 199:8 202:23 203:22,24 204:3,14 206:9,14,20 207:9 Burton's 70:20 business 8:17 13:19 16:14,14 21:23 67:14,18 99:4 176:21,21 180:19 184:8 184:19 185:17 186:10 189:20 189:22 190:1,3 190:3,10,13 businesses 176:23 184:16	184:17 button 5:17 <hr/> C C 4:1 160:13 210:1,1 C-W-I-P 95:21 calculate 14:6 125:7 169:21 calculated 26:23 92:14 144:11 calculating 29:23 calculation 21:6 51:24 52:1 167:23 168:2 181:20 192:20 197:7 calculations 50:8,10 167:8 167:13,16 168:10 calendar 96:22 96:22 125:16 call 22:15,15 23:21 34:14 54:10 75:22 75:24 120:4 155:15 159:12 called 14:8 22:18,20 182:6 196:6,11 calls 99:23 159:14 193:1 candidly 15:3 candor 141:13 capacity 35:7,9 76:22 100:9 184:4 capitalized 21:14 Capitol 2:3 caption 210:10 capture 124:10 car 190:4,6 care 56:5
---	---	--	--	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

carry 133:22 138:12 carrying 10:13 cars 190:10 case 8:9 9:12 9:25 10:15 11:25 12:2,5,7 12:8,9,12,13 12:20 13:2,3,6 13:10 18:11 19:9,10,14 20:12 24:17 25:1 26:13,18 27:18,24 36:14 45:12 48:2 49:22 50:10 63:14 70:6 77:1,15 81:18,20 82:4 82:8 85:22 88:24 89:20 89:24 91:8,24 93:14 99:6 102:9 103:22 105:5 106:11 106:20,20,25 107:4 108:14 108:17,18 109:25 116:18 119:5,7,9,15 121:6 124:22 125:4,13,14,22 127:11,12,16 129:12,13 131:11 133:14 134:2,3,6 135:21,24 136:11 137:1,10 137:15 138:13 139:22 144:14 145:1 147:15 147:23 148:3 152:11,15,22 153:15 154:1,6 154:21 156:11 160:19 165:5,8 166:18 168:20	175:16,24 176:18 178:8 178:14 193:14 193:14 199:18 cases 23:12 36:11 37:23 52:7 107:10,11 111:22 112:6 114:24 116:1 125:7,7 133:19 135:24 156:7 169:15 201:6 catch 185:16 categorized 141:7 category 61:16 caught 179:3 causal 49:8,11 cause 49:13 78:9 120:16 156:10 210:9 caused 9:7 35:11 76:25 caveat 126:12 CCR 1:24 210:18 center 172:25 central 2:15 18:8 certain 6:23 7:13 20:17 73:17 85:8 102:4 110:17 117:6,8 118:14 131:16 149:21 151:7,8 188:19 191:18 certainly 22:1 81:3 108:1 113:11 114:8 115:15,20 126:3,14 130:25 135:5 137:3 150:11 153:16,18 154:14 164:16 185:24 certainty 157:15	Certified 210:5 certify 210:7 chain 50:23 102:2,5,10 Chairman 1:18 157:18 challenge 68:13 68:22 69:23 152:22 challenging 29:8 68:9 95:7 chance 187:10 change 9:16 11:6,18 12:17 16:20 17:6,20 19:24 21:8 23:15 32:16 32:20 63:14 63:14 66:16,21 77:14 82:19,21 86:2 91:4 92:6 93:14,19 95:16 104:19 128:8,15,15,20 128:24 129:1,7 129:9,16,18,23 129:24 130:16 130:19,21 144:7 150:18 151:10,13 152:21 153:1,5 154:4 162:7,8 162:8 163:21 166:13 176:11 185:12 198:14 204:22 changed 7:24 14:14 22:10 32:19 93:11 128:8 157:16 197:6,8 changes 6:25 7:1,6,19 10:10 11:13,14 17:14 18:21 19:17,21 21:6 22:13	35:18,20 36:16 37:7 38:5 47:14 49:14 53:21 66:23,25 67:1 77:6 78:12,13 81:9,10,14 90:23 92:3,3 129:21 130:22 153:2 160:21 160:25 162:20 163:8 changing 10:21 28:18 181:14 chapter 21:9 67:8 87:7 129:17 141:8,9 175:12 194:18 194:19,20,20 199:25 characterizati... 13:8 charge 171:20 192:7 Charles 22:5 64:5 155:19 155:23 206:25 208:15,17 chart 139:16 153:18 208:20 check 97:22 checking 181:6 Chief 156:2 choose 132:17 chose 134:9 Chuck 107:15 circumstances 59:14 68:23 85:8 90:8 102:4 114:9 citation 112:7 118:11 cite 50:21 55:14 115:3 119:10 City 1:9 2:4,12 2:20 3:3	20:22 165:15 210:15 claim 22:9,25 130:18 claims 13:12,15 128:14 clarification 40:8 62:16 71:19 72:1 103:2 104:19 203:4 clarifications 70:17 clarified 153:25 clarify 37:21 48:23 150:24 175:11 179:12 clarity 62:14 class 7:9,13,13 7:15,16,20,25 9:14,16 14:15 14:21 15:5 29:14 39:7,9 41:17 45:21 46:2 54:17 61:16 62:3 74:1,25 75:5 75:16 137:23 150:20 182:1 184:23 190:2 190:6,16,25 194:7 195:10,11 195:14,23 196:5,7,22 199:3,10 classes 21:18 43:13 classification 55:12,18 58:17 59:25 classified 45:20 138:10 classify 46:1 clear 11:3 12:1,4 13:25 61:22 71:22 127:19 138:8 143:23
---	---	---	---	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

174:6	comes 26:12	134:11 135:1	31:22 132:24	131:9,9,12
clearly 8:12 9:11	56:6 72:20	138:18 139:9	139:1 142:19	132:7,14 135:6
10:19	199:14	139:18,23	149:10,14,16	136:20 137:9
close 120:25	comfortable	140:7 141:24	151:5 177:12	137:19,19
151:8	119:16	142:12,16	177:24 185:21	138:12,15
closed 38:1	coming 44:22	144:9,17	194:22,23	143:5,17
closely 193:4	67:8 86:9	147:19,20,20	195:14	151:22 152:7
closer 201:23	94:23 97:8	148:18 150:14	company 1:13	152:22 154:23
clue 189:15	158:9 169:5	151:22 152:5,9	2:9 4:8,16,21	168:11,25
193:11	202:25	159:7 160:23	4:22 6:16,20	169:4 172:18
code 29:17	comma 36:11	165:20 166:18	8:18 9:3 11:12	173:6
55:14,15	comment 141:12	166:24 169:14	18:3,13 19:6	company's
181:24 194:16	comments 18:10	171:7 177:19,21	20:24 21:2,20	9:25 10:8
coincide 19:9	131:25	183:15	21:23 22:1,2,7	11:24 28:11,16
coincided 93:14	commercial	Commission's	22:12 23:19	28:20 30:12
Cole 210:4,16	176:8	24:8,14 109:1	24:3,12 25:18	32:2 33:1
Coleman 1:20	commission 1:2	120:2,21 122:3	25:23 28:12	53:21,23
130:5	3:1,5 4:24 8:4	137:16 147:17	28:13,21,23	56:17 88:10,12
collaboration	8:10 9:1,10	172:25	28:25 29:7,12	92:14 94:15
14:11 44:10	10:7 12:21,24	Commissioner	29:22 30:8,16	105:2 122:18
collaboratively	16:2,4,8 19:10	15:19 19:2	30:19,21 31:9	125:12,23
44:4	20:9,19,20,24	26:3 33:5,10	31:9,23,25	131:20 133:6
collected 84:14	21:17 23:8,11	33:18 34:6	32:4,8,11,15	153:15 154:14
84:17,23	23:15,17,18	51:8,10 57:1	32:20 34:2,5	169:25 171:24
collecting 85:15	24:3,6,11,21	74:11 93:1,2	35:8 38:23	compared
collections	26:20,25 47:4	93:23 128:4	39:12,20 43:5	62:12 143:6
85:19,20	47:10,19,23	130:3,3,8,12	43:18 44:1,8	comparing
collectively	47:24 48:1	134:14,19,21	44:12,18,24	145:2 178:5
144:10	51:7 69:24	135:9 141:15	44:25 47:3,17	complete 177:7
college 202:21	70:5,11 86:19	145:4 146:6	48:1 56:5 57:7	completely
column 52:8	90:7,14,18,21	148:21 150:17	57:13 63:5	9:24 89:24
179:19	91:1 93:16	159:8 199:4	64:11,16 68:8	92:17
columns 180:25	99:5 100:11	206:8,14,19	69:2 71:12,13	comply 18:15
combine 40:19	105:1,4,9,10,12	206:20,21	72:16 73:2	comport 125:16
combined	105:13,20	Commissioners	79:12 80:22	compute 51:21
50:12 96:24	106:8,18	1:21 8:6 16:1	82:9,12,14	51:23
96:25	108:17 109:4	130:5 137:24	83:1,14,18,21	concept 103:12
combining	111:17,19,21	common 81:17	83:21,25 84:5	concern 129:4
144:13	112:3 114:5	89:2 92:1	85:1,24 87:14	concerned
come 30:9	116:1 117:7,14	116:12	88:16 90:11	193:22
51:15,17 55:1	117:16 118:3,5	communicated	91:1 93:11,15	concerning
83:12 99:18	118:19,25	77:9	94:7,10 95:25	38:25 79:19
128:12 130:14	119:18 120:7,19	communication	97:4 98:19	167:8
133:24 135:22	122:11 127:10	94:13,14	116:2 121:5	concert 49:21
168:5,23	127:15 130:15	communicatio...	124:9,22	concluded
169:3,7,11	132:2,3,9,20	94:18	125:16 127:7	205:4
180:16	133:12,25	companies 9:3	127:25 130:17	concludes

EVIDENTIARY HEARING - Vol. I 11/8/2017

26:25 204:5 conclusion 55:1 83:12 concurrence 116:24 148:13 149:24 concurrent 129:10 confirm 64:14 119:14,15 124:16 183:2 conflict 108:25 conform 21:9 109:6,8 confusing 55:19 105:16 110:21 177:5 confusion 174:18 consent 116:24 consider 24:16 24:22 61:8 90:8 126:14 142:24 143:8 143:9 175:13 195:1 consideration 89:2 91:8 98:9 145:15 147:15,22 considered 16:22,24 19:18 20:21 26:16 60:21 61:16 95:25 108:19 168:13 175:17 176:1 195:6,14 considering 24:17 81:10 92:7 97:3 consistent 31:19 41:13 82:13 112:19 113:7 139:19 140:5,8 140:9 consistently 69:17	conspiracy 49:17 construction 7:17 8:1 96:8 consultant 41:2 64:1 consultants 71:16 consultants' 70:25 consumer 82:3 83:11 84:24 85:1,24 Consumers 5:11 6:3 26:10 contact 5:25 contacted 14:13 42:19 contained 36:23 contemplate 103:14 contested 166:19 context 12:12 13:2 24:16 41:16 49:12 105:7,20 112:25 118:16 153:14 154:20 contexts 109:23 141:23 continue 26:21 41:3 65:16 108:13 continued 14:20 120:8 control 9:9 10:6 33:1 conversation 63:1,3 68:2 71:2 72:4 81:4 81:5 conversations 62:24 66:3 67:4 81:1 95:18	conversion 41:20 converted 40:20 cooperation 14:11 copy 42:10 56:25 59:18 59:21,23 60:6 65:22 115:4 146:12 157:8 203:9,10 204:17 Corporate 35:10 corporation 188:6 corporations 201:23 correct 19:16 25:25 36:3 36:23 38:6 39:10,13,21 41:6 44:19 45:1,22 48:15 48:19 49:18 51:18 53:1,2 57:19 64:24 64:25 65:2 70:21 80:20 81:22 82:16 83:21 84:5,8 84:18 85:2,18 86:1 88:22 89:15 90:22 93:17 99:1 105:1 106:9 107:16 108:8 108:14 113:17 121:11 122:14 122:21 127:22 129:6 131:3,17 138:5 143:18 153:10,11 154:1 154:2,21 155:1 155:5,6 157:8 160:8,9 161:4	161:23 163:17 164:5,9,10,21 164:22 165:8 165:9 166:16 166:20 173:11 173:25 174:4 174:10,16 178:9,11 180:22 181:2,7 181:15,17,25 182:9,13,17 183:5,8 187:15 188:4,7,8 189:13 195:18 202:6 203:16 210:12 correcting 131:7 correction 17:10 36:5 corrections 35:18 36:15,18 37:6 77:6 78:2,4,11 100:17 157:10 157:11,23 158:1 159:24 160:10 correctly 21:20 25:19 33:22 76:12 87:15 88:2,6,15 178:13 182:16 182:20 correlation 43:15 54:1 corresponde... 40:15 74:9 94:13 173:3 cost 7:8 16:6 21:7,14 29:15 72:18 122:2,6 122:10 135:15 147:14 154:12 168:24 179:22 181:23 202:2 costs 9:7 24:2 26:19,21 27:10 27:21 35:23	116:2 120:6,7 132:5 144:22 147:22 149:21 151:2 counsel 2:18,18 2:19,22 3:1 5:4,8 10:24 11:23 13:4,9 20:11 23:14 25:2 26:12 27:17 46:21 77:9 87:1,4 93:7 126:23 146:1 155:15 156:4 159:12 159:14 160:3 191:5 Counsel's 12:21 20:12,18 23:11 112:1 Counselor's 28:8 counties 7:2,24 9:16,22 10:11 11:7,13,14 13:21 21:3,21 22:4 22:16,18 23:6 25:20 30:15 39:18,19,25 40:3,18 43:19 45:19 46:1 49:18 51:20,21 52:3,4,6 55:5 55:20,22,22 61:1,7,8 62:19 62:22 63:5 67:2 71:6 74:16,24 75:4 79:13 80:13,15 84:19 85:12 87:17 88:2,17 92:10,13 98:21 130:21 141:8 144:3 151:8,18 182:7,24 185:10 198:8 201:10
---	--	--	---	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

counting 192:4 country 59:6 county 1:14,15 2:17 4:10,10 5:14,21 6:25 7:11,14,25 9:11 10:20,25 12:16 13:11,14,16,20 13:22,25 14:2 14:9,9,13 15:1 17:3,5,12,19 21:5 22:5,6 22:22 23:2,2 23:6 25:10 28:5,8,10,15 28:20,22 29:10 30:9,12 30:14,18,21,25 31:6,10,24 32:3,6,10,13 32:21 33:2,19 38:25 39:11,15 40:20,21,23 40:24 41:1,3 42:20,25 43:5,21,24 44:5,10,14,16 44:25 45:3 49:7,7,9,10,15 49:17 50:1,3 50:15 51:16 52:7,11,12 61:4 61:10 63:6,19 64:4,5,8 68:10,12 69:15 69:16,25 70:1 71:22,24 72:1 72:5 74:7,17 75:13 79:19 80:1,19,23 81:6,9,13 82:16 83:3 84:25 85:25 86:10,12 89:4 89:10 91:5 92:15,16,17 93:7 94:17,22	95:21 96:21 97:5,6 98:2 98:10,10,12,18 101:16 102:10 102:11 126:9 128:25 129:1 141:4,4 143:20 143:21 144:4 144:16 145:11 145:17 163:5,8 163:9,10,24 164:3,3,8,12 164:20 171:1,13 171:21,23 172:1 172:1 173:10 173:23 175:8 176:1,10,15 177:12 179:2 181:14 183:23 184:15,18 185:5,6 187:2 187:15,22 188:18,19 189:21 191:7,11 191:17 193:17 196:21 198:1,13 200:3,21 202:4 210:4 210:16 County's 15:6,7 15:13,15 19:17 19:20 32:13,14 32:18,19 40:12 42:10 95:7 162:1 172:4 198:20 207:5 county-by-co... 62:25 couple 26:14 40:21 128:6 146:2 157:11 course 99:4 105:5 court 2:11 5:2,9 5:22 27:7,8 63:14 155:22 156:13,17	159:20 courts 59:4 cover 85:18 93:21 110:22 140:3 159:23 160:11 covered 40:9 covers 180:21 Craig 2:6 create 67:16 105:11 108:24 created 44:9 116:17 145:17 167:15,16 creating 62:21 creation 109:5 credibility 111:5 CRH-R-1 109:18 CRH-R-2 146:16 criteria 109:5 133:9 136:12 cross 46:23 101:3 158:8,14 161:9 170:16 cross-examin... 6:6 37:19 38:22 45:10 46:25 78:21 79:9,10 86:18 87:2 101:23 113:6 123:5,20 123:22 161:21 162:14 165:2 175:6 181:12 183:20 188:24 191:6 206:7,7 206:8,12,13,13 206:18,19 207:2,3,3,7,8 207:8 CSR 1:24 137:18 210:18 current 8:16 10:3,14 21:12 46:4 57:9 59:23 81:18 88:23 105:23	125:21 134:3 140:21 184:5 currently 68:5 81:21 88:16 94:4,9 99:17 123:3 customary 8:17 customer 53:17 56:7,14 79:15 82:11 83:16,19 124:11,25 customers 22:25 25:7 53:15 68:4 82:6 166:2 cutoff 129:12 CWIP 95:21 96:1,6,15 <hr/> <div style="text-align: center;">D</div> <hr/> D 4:1 206:1 DANIEL 1:18 data 45:12,15,19 45:25 46:7,12 74:22 172:25 208:6 date 70:9,9 73:13,18,19 75:15 93:8 95:18 108:7 126:24 dated 174:2,12 David 2:10 5:12 26:9 david.woods... 2:13 day 34:1 205:1 deal 79:11 128:17 132:11 150:22,24 151:11 dealing 93:8 133:17 144:19 deals 12:22 55:16 dealt 132:12 death 20:17	debate 13:9 debating 74:8 debit 12:23 90:17 91:2 105:14 138:9 debits 105:18 105:23 138:4 December 97:11 126:17 decide 16:4 71:18 116:20 decided 13:10 27:5,14 65:15 125:13 166:18 decides 71:16 deciding 27:9 decision 9:12 10:14 19:9 24:19 27:6,12 28:2 64:17 69:24 70:1 86:23 89:5,10 89:13 137:2 148:10 decisions 9:11 9:20 10:4,5 12:2,16 24:7,9 66:14 120:2 201:21 declaration 15:1 43:23 51:20 73:16 177:6 178:12 180:9 declarations 9:22 14:9 39:15 72:8 87:17 176:23 180:4 184:20 decreased 154:12 deduct 169:10 defer 6:23 11:15 11:17 12:10,14 47:7 48:3 91:1 116:2 142:7 149:21 151:23 deferral 8:7
---	---	--	--	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

12:5,6 27:10 105:21 116:3 119:1,3,8,8 120:4,16,18,21 120:23 121:19 121:25 122:3 122:10 124:21 126:25 132:5 132:22 133:9 133:13 135:19 136:6,22 144:20 deferrals 50:2 50:15 106:10 132:25 150:14 deferred 12:23 23:24 27:13 90:17 91:2,7 99:10 105:14 105:17,23 111:24 127:8 138:3,9 147:15 147:22 148:7 deferring 135:21 defers 26:18 defin-- 117:21 define 49:11 109:4 111:3 defined 61:16 91:16 175:12 203:17 defines 8:14 defining 120:15 definitely 179:3 197:11 definition 8:20 60:13,22 91:10 91:12,21 92:1,4 108:24 111:1,15 112:3 113:7,8 113:10,23 114:18,20 115:4 115:5,6,8,12,18 115:19,22 116:11,15 139:15,16,19 139:22 148:24	194:9 199:10 definitions 59:9 59:10,19 60:7 139:13 146:9 175:12 203:7 degree 57:18 129:14 202:20 deleted 157:19 delighted 204:19 Deloitte 109:19 110:2,3 111:6 Deloitte's 111:3 112:15 delve 141:10 demonstrate 27:1 denied 27:3 deny 20:19 23:8 department 100:12 183:23 depend 143:25 depending 155:4 depends 59:11 189:25 deprec-- 33:14 151:14 depreciate 14:16,21 depreciated 31:12,15 41:9 41:12 67:24 74:13 depreciation 14:6,18 15:12 21:12,16,17 29:24 31:13 38:24 39:2 41:10 42:22 52:2,9,21 53:4,7 54:8,9 54:11 55:17 56:4 74:11,20 93:12 130:16 142:22,22	143:18 151:14 176:5,11 179:9 180:5 182:3 197:14,20,24 describe 92:8 113:12 202:14 described 147:11 describes 147:10 203:8 description 58:4,10 67:21 117:21 141:3 174:8 designate 127:17 designation 170:2 desired 132:4 despite 80:24 det-- 59:13 details 89:8 90:4 141:11 determination 11:25 18:9 19:8 24:25 59:14 111:20 126:2 126:13 127:11 152:14,17 195:10,23 196:22 determinations 12:20 18:18 150:10 determine 14:15 69:15 152:7 168:4 169:24 193:5 determined 8:9 74:18 182:2 195:1,12 determines 182:3 determining 67:17 139:10 deviate 118:17 160:16	deviated 118:8 120:2 devices 6:10 123:16 diesel 58:10 difference 53:12,14,23 60:25 61:15 119:14 122:23 136:15,16,17 139:8,11,21 192:24 198:6 differences 140:21 different 9:13 20:13 22:3 25:22 65:11 74:19 92:16 107:18 108:5,11 108:13,15 117:18,22 136:21 139:18 144:4 180:6 184:16 190:14 190:16 191:2 191:21 193:18 196:16 197:19 198:8 201:10 204:15 differently 172:15 difficulty 148:2 direct 15:14 34:19,23 35:2 35:12 36:19 36:20 37:10 37:22 43:14,15 43:17 48:6,7 50:20 53:25 58:1 76:9,17 77:3,23 89:16 91:14 100:3 128:1 155:20 159:18 170:15 171:5 206:6,12 206:18 207:2 207:7 208:3,7	directed 15:1 152:1 directing 54:19 direction 49:20 directly 71:24 164:19 Director 35:10 57:10 76:24 disagree 86:5 115:24 148:15 148:16 152:16 discrete 17:22 17:24 discretion 16:23 17:16 19:22 65:9 199:14,21 discriminate 62:11 discriminating 69:11 discrimination 68:25 discuss 25:14 89:14 115:25 194:21 discussed 40:23 42:21 71:14 80:11 81:25 96:20 115:23 116:11 131:24 174:6 175:16 discussing 39:8 110:6 131:25 discussion 19:5 40:25 61:4,6 62:18 63:12,13 63:15 68:7 74:8 79:19 95:6 103:9 138:25 200:7 discussions 61:3 79:23,24 83:2 dismissed 103:25 dispute 56:8
---	---	--	--	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

95:24 111:6 distinction 60:24 61:15 111:11 138:8,11 distinguish 145:23 distributable 175:18 177:13 177:15,17 186:16 187:16 194:9,11,17,21 195:2,7 distribute 84:20 85:12 distributed 84:23 85:5,16 distributing 32:21 distribution 7:14 22:19,21 54:15 54:22 88:18 175:20,22 178:2,6 195:8 201:7 203:5 203:18 distributions 86:11 district 27:7 84:15 130:22 178:20 179:24 186:23,24 187:17 192:3 193:7 districts 23:1,5 84:15,16,16 178:22 188:18 192:2,2,15,25 192:25 divide 169:6 divided 168:19 180:13 documents 110:18 doing 16:14 22:16,17,23 25:20 29:1,6 31:20 33:21	33:25 34:3 41:14 43:18 62:23 89:12 122:20 144:3 162:16 170:17 dollars 17:1 20:3 151:23 154:19 191:12 200:3 door 65:6 double 181:6 doubt 111:4 132:13 DR 46:10 dramatic 92:3,9 92:12 dramatically 28:17 155:4 draw 111:10 due 11:17 12:15 23:7 73:19 76:1 83:3 99:2 116:12 155:9 164:19 166:13 duties 171:19 184:13 <hr/> <p align="center">E</p> <hr/> E 2:15 4:1,1 5:15 5:19 28:7 206:1 210:1,1 e-mail 31:6 40:4 40:6,7,15 41:2 41:5 42:4 63:17,18,24 64:20 67:5 67:22 71:1 73:8 75:11 82:25 83:5 93:9 95:13 173:16,21 174:1 174:11 200:5 202:7 209:1,3 209:5 e-mails 25:13 66:11 95:1 172:14,19 174:17	earlier 47:13 113:5 115:23 128:24 131:1 131:24 135:17 146:11 179:21 185:16 early 28:14 31:5 125:25 153:19 earnings 84:5 132:25 133:1 easier 33:17 East 2:3 educate 22:12 22:14,24 25:24 131:23 educational 202:15 effect 7:19 27:25 49:13 53:22 81:4 84:7 85:23 93:21 124:9 136:3 142:2,3 146:7 167:13 168:14,23 176:13 effective 126:15 127:13 effects 8:15 either 36:19 50:19 70:8 95:1 107:12 109:6 122:2 136:13 138:12 139:25 144:16 152:12 159:5 187:22 189:21 193:7,9 electric 58:11 105:18 113:20 139:1 153:17,18 154:24 electronic 6:10 123:16 elevated 72:1,6 72:7 eligible 35:23	eliminating 121:2 Elizabeth 40:15 42:5 71:7 94:1 173:21 209:3 else's 59:12 178:7 204:15 employed 7:2 35:6 57:5 76:21 94:9 100:8,10 171:12,13 employee 94:6 employees 71:10,11 employment 183:25 enacted 31:17 43:2 185:8 encompasses 116:13,15 Energy 5:10 6:3 26:9 enforced 23:22 England 2:2,2 4:17,18,19 6:17 6:18 8:21 9:1 15:22,23 19:5 27:24 29:20 34:12,13,17,25 35:2 37:17,25 38:6,8 56:23 59:21,22 60:2 60:5,9,11 73:3 73:6,7 75:19 75:22,23 76:8 76:17 78:19 79:6 85:3 98:5,6 99:13 101:6 102:24 123:4,19,21,22 124:15,17,19 128:2 145:9 149:7,8 153:21 158:17 159:3,4 161:12 164:25 165:1,2 166:21	170:5,8,14 174:24 183:18 183:19,20 187:11 188:13 188:16,25 189:2 194:2 203:25 204:12 206:2 206:6,10,12,15 206:19,22 207:3,8 enjoyable 205:1 ensure 33:21 enter 4:15 101:1 entities 23:4 86:11,12 147:4 188:2 entitled 191:7 entity 17:9 85:6 182:25 186:13 186:20 envision 153:4 EO-91-358 106:21 EO-91-360 106:21 equal 84:6 155:2 191:16 Equalization 70:3 183:14 equally 18:20 equipment 29:14 54:14,17 54:21 58:10,11 175:21 176:14 176:24 177:23 179:25 190:5 190:12 195:5,6 195:13 196:7,9 197:25 198:3 203:15,18 equitable 185:9 ER-2014-0258 119:5 essentially 37:14 54:1 165:13
--	--	---	---	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

establishes 12:25 68:18	exactly 63:25 109:6,8 116:19	100:14 156:18 158:4,5 160:5	131:5,6,13,16 133:5 135:20	expressed 108:1 111:23
estate 175:17,18 176:2,8 177:2	119:20 189:7 190:22,24,25	161:8,11,16,17 167:19,20	136:6,13,19,21 141:22 142:17	expressly 50:22
177:10 178:17 186:17 191:24	196:11 examination	168:4 170:4,10 170:20,22	151:6 165:6,7 165:11,24	extensions 73:18,20
191:24 estimated 51:23	35:2 73:7 76:17 98:6	173:5,13,20 178:16 208:2	168:15 expenses 8:8	extent 12:9
51:25 98:12 EU-2012-0027	100:3 153:24 155:20 159:18	208:4,5,7,8,10 208:12,14,16	11:10,16 12:10 16:17 20:16,20	47:21 79:22
119:11 evaluating	167:5 170:16 171:5 206:6,10	208:18,20,21 208:23 209:1	21:1,4 23:24 25:4 26:22	82:9 83:13
57:12 69:14 event 16:10	206:12,15,18 206:23 207:2	209:3,5 exhibits 5:21	81:24 85:18 97:21 120:10	86:9,10 90:1,4
17:23,25 20:22 23:14	207:4,7 example 7:11	37:20 38:9,13 38:14 76:11,14	121:20 125:4 125:15,23	95:17 109:8
120:16 126:14 140:4 155:10	10:9 25:4 52:7 69:5	78:21 79:3,4 94:20,22	127:8 141:21 141:25 142:8	112:4 127:15
162:3,10 163:16,21,21	118:24 120:3 125:11 151:21	101:2,8,12,13 156:22,23	142:12,20,24 149:21 165:25	153:1
165:19,22 166:2	179:8 190:4 192:15 193:2	157:2 158:13 158:15,19,20	169:8,25 experience	external 110:3
events 8:15 9:5 9:8 50:24	Excel 178:17,24 excerpt 166:7	172:4,4,10,12 172:17,19,22	47:24 103:13 115:2,3 118:12	112:11 113:1
102:2,5,10,11 103:18,20	excess 131:19 142:7	173:2 174:19 174:21 175:1,2	118:13 125:12 128:19 149:20	116:4,25 133:7
163:11 eventually	exchange 73:10 73:11,13 93:9	204:8,10 208:1	183:25 experiencing	148:14 150:3
83:16 84:10 evidence 6:6	excuse 9:15 11:14 13:4	exist 108:13 existed 10:22	197:24 expert 47:6	150:12
21:22 25:10 38:15 46:10,18	80:10 96:21 131:6	existing 31:20 40:19	58:25 64:3 161:22,25	extra 117:2
79:5 101:14 112:21,24 113:3	excused 6:4 75:21 76:1	exists 112:3 expect 10:14	expertise 47:12 47:20 49:2	extraordinary
133:12,14,18,19 133:20 147:25	79:8 99:15 155:14 159:11	47:3 98:24 126:3 135:22	111:7 explain 57:21	8:8,11,14 9:5
148:18 158:21 161:8,18	170:25 204:4 exempt 187:25	expected 88:15 97:10	132:16 168:1 194:8 197:12	10:23 11:3,5,7
170:23 174:20 175:3 206:5	exhibit 34:23 34:24 35:14	expects 151:24 expenditures	198:21 200:11 explained 40:5	11:21 16:5,6,8
206:16,24 207:5	37:3 40:11 42:10,10,11,16	142:4 expense 6:24	explanation 30:22,24	16:13,25 17:2
evidentiary 1:7 4:2 204:6	46:12,13,15,17 50:19,20	7:3 10:2,2,10 11:5 16:11 38:3	59:13 194:6 explicit 117:16	17:17,19,23
205:3 exact 96:5 99:6	74:23 77:2 78:6,23,24	120:16,18 122:16 126:11	121:10 132:19 express 107:22	18:4 19:18,20
197:15	82:24,25	126:17 127:6	107:25	20:20,22
				23:13 26:13
				27:2,10,13
				32:4 82:21
				91:4,10 92:2,5
				92:7 103:9,12
				103:14 132:5
				139:4,10,16,24
				140:4 142:25
				143:8 145:19
				148:24 162:3
				162:4,10
				163:16,25
				164:4,8,13,16
				extremely 32:14
				eyes 33:17
				F
				F 210:1
				face 20:2
				faced 143:11

EVIDENTIARY HEARING - Vol. I 11/8/2017

facilities 69:6 189:22 190:18 191:3 facility 190:9 facing 82:15,15 82:17,21 fact 9:20 11:1 12:23 14:2 22:8 25:12 43:24 65:23 80:24 107:14 116:19 118:4 121:6 132:19 133:21 144:2 153:8 166:9 182:21 186:15 198:16 factor 52:9 142:14,15 176:5,7 179:9 180:5 182:3 186:18 197:14 factors 24:17 90:19 144:12 150:13 154:16 185:7 factory 69:6 facts 26:13 27:18 59:14 68:23 92:23 failed 30:19 31:3 32:8 failing 145:16 fails 30:1 failure 15:4 30:22 fair 49:5 55:23 62:9 109:2 127:14 150:16 182:18 185:9 fairly 118:9 144:22 182:24 faith 143:21 fall 59:3 falls 62:3 68:20 176:24 false 32:4	familiar 79:18 79:22 80:17 83:6 84:19 87:6,13,19 89:7 94:1 114:1 117:1 140:1 157:1 162:23 184:21 far 67:22 69:23 83:20 94:16 95:20 96:25 140:13 141:8 168:15 177:23 186:8,9 193:21 193:22 200:15 fast 75:15 fault 13:13 180:24 Feddersen 1:24 210:5,18 federal 65:2 181:24 197:7 198:2 feel 65:10 86:23 119:16 159:2,5 199:18 felt 68:23 FERC 18:13,14 108:23 109:7 113:6,18 116:10 116:16 127:23 138:25 139:1 139:17 146:8 154:1,3 160:13 FERC's 115:8,22 figure 169:1 197:5 figures 181:1 file 1:13 4:10 30:4 87:15 88:5,6,15 137:10 185:21 filed 9:21 14:7 14:23,25 18:11 35:12 65:24 70:22,23,25 73:16,21,23	77:1 104:20 156:7 files 64:6 65:21 filing 62:10 63:9 64:4 66:4 73:23,25 74:2 74:9 77:10 160:23 filings 33:20 41:25 42:20 57:12 61:24 65:17 final 126:2,13 135:12 183:10 193:12 finally 13:11 127:19 154:23 157:20 financial 10:8 17:24 23:25 86:21 110:12 119:4,17 120:23 132:22 136:15,24 148:7 154:15 find 17:15 25:25 66:12 74:8 91:13,15 118:5 145:22 146:20 146:24 162:4 162:9,19,22 163:13 180:12 200:6 findings 121:9 135:5 finds 13:14 15:9 15:14 32:10 118:19 fine 34:22 46:24 fire 23:3 84:16 192:2,25 firm 4:19 210:6 firms 110:4 112:11 112:21 first 7:17,23,25 9:14 16:4 18:12	28:14,19 34:12 36:8 45:22 45:22 47:23 48:17 55:17 61:10 77:11 95:16 116:14 122:5 124:24 126:1 143:5 151:24 155:16 165:23 178:15 179:15,19 180:24 194:8 fiscal 136:16,17 145:1 151:15 fit 136:12 137:9 five 28:1 124:24 143:6 151:24 168:20 169:9 189:14 five-year 152:4 152:19 fix 17:10 fixed 72:21 flip 146:19 floods 144:21 flow 84:10,10 fluctuate 11:10 focuses 150:9 folks 43:14 follow 30:22 32:15 118:4 139:14 follow-up 130:13 followed 27:11 202:12 following 25:6 31:5 122:2 176:16,22 follows 35:1 76:16 100:2 125:20 155:19 159:17 171:4 footnote 8:23 160:19 foregoing 210:12 foregone 131:19	foremost 194:9 forever 198:24 forget 153:17 form 43:22,25 44:2,3,4,9 51:22,22 52:12,17,21 60:13 63:9 format 62:21,22 forms 52:6 63:10,10,11 forth 40:3 110:9 210:10 forward 32:13 96:14 131:21 133:22 138:13 153:5 found 106:20 194:12,15 foundational 92:12 four 26:15 27:4 27:21 28:1 112:20 143:6 172:10 189:8 Fox 2:15 5:15,15 5:18,19 6:1 26:6 28:6,7 33:9,16,23 34:7 38:19,21 38:22 45:4 70:15 72:11,12 72:13,14,23 79:8,10 85:14 86:15 98:3 101:16,17 145:12,25 158:22,24 161:19,21 162:11 167:1 170:19 171:5 172:13 173:4,11 173:14,18,20 173:25 174:4 174:10,11,16 187:5 188:11,17 204:2 206:4
--	--	---	---	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

206:7,10,12,21 207:2,7 frame 75:6 frankly 142:15 free 118:23 138:12 French 29:17 frequently 42:5 42:21 front 35:16 55:11 74:25 78:7 98:18 146:13 166:5 Frost 31:8,11 40:9,16 41:1 41:22 42:4 63:24,25 66:4 67:22 71:15,22 73:11 73:15 75:12 83:1 94:15 95:1 173:16,21 174:2,12 200:7 208:24 209:1,4,5 Frost's 65:21 70:21,24 full 24:16 171:6 210:12 fully 42:25 68:25 91:8 function 184:12 fundamental 11:6 92:3,6 119:22,24 fundamentally 10:21 12:17 110:16 114:22 funding 86:13 funds 85:12 furniture 177:22 further 11:21 45:4 46:19 51:5 70:13 72:10 86:15 92:24 103:8 104:3 109:7	149:4 152:1 155:12 162:12 170:3 183:17 202:24 future 12:11 22:13 24:2 132:12 133:15 133:18 134:2,6 142:9 144:7 147:15,23,25 166:2 <hr/> G G 4:1 GAAP 23:21 108:23 109:7 113:14 115:22 118:4,8,17,20 119:23,25 120:3,10,20 120:22 133:10 148:20 gas 31:25 33:25 33:25 60:17 69:2 89:20 103:23 105:18 113:20 139:1 153:18 177:13 177:25 178:1,8 189:3 194:22 201:7,7 203:14,15 Gas' 201:11 gaseous 60:15 203:13 gathering 54:14 54:22 gears 126:21 gee 30:24 general 8:21 16:20 54:3 62:7 71:8 106:5 113:3 118:18 139:3,12 generally 23:20 59:2,4 73:18 88:1 110:10	113:12 117:4 136:11 generic 137:5 getting 56:17 85:7 120:25 151:20 188:17 191:7 gist 165:10 give 30:1 31:2 55:7 56:25 59:18 75:2 91:9 114:19 132:10 152:5 168:13 202:1 given 5:8 30:6 68:15,22 70:10 99:3 141:21 210:15 gives 58:4 141:2 196:14 giving 98:9 120:13 glass 58:9 go 4:6,7,14 27:25 41:20 44:7 46:10 53:22 55:3 57:24 58:7 61:23 62:15 64:20,23 67:11 70:6 71:22,25 93:14,21 104:3 104:15 120:8 120:11 121:13 128:24 129:21 135:18 141:17 145:9 147:3 152:8,12,25 159:2 189:6 193:3 204:7 goal 131:8 goes 52:20 71:3 136:3 144:25 168:20 179:20 197:20,21 going 24:18	27:24 31:17,18 40:3,10 43:1,2 44:12 45:14 49:21 56:12 58:8 62:1 66:17 67:6,12 71:2 80:14,18 83:4 96:14 103:3 107:4 120:5 123:4 126:21 127:11 131:18,20 132:9 135:12 139:15 142:21 151:16 152:11 153:5 162:1 168:10 181:17 187:9 190:6 191:11 194:6 199:6 201:4 good 4:4 5:5 6:18 15:25 16:1 20:8 47:1,2 51:11,12 57:1 87:5,6 93:3,4 101:24,25 112:2 123:23 123:24 137:8 137:8 143:20 158:11 162:15 181:13 183:21 gotten 149:20 191:8 govern 110:11 government 9:8 10:5 governmental 86:11 188:2 governs 110:16 grand 178:24 180:1 grant 23:13 24:21 48:2 105:2,4,10,13 142:12 193:23 granted 6:7 18:1 73:21 93:16	122:10 137:13 138:4 141:24 155:8 granting 18:9 23:10 24:23 24:25 grants 99:5 ground 55:1 grounds 68:12 group 5:11 26:10 71:8 72:19,19 GU-2005-0095 160:20 GU-2014-0032 103:22 guarantee 149:22 guess 27:12 44:19 51:3 73:22 79:12 85:21 98:9 102:20 104:5 106:5 108:18 119:15 120:12 120:14,17 121:16 122:12 122:19 126:14 133:7 136:10 136:20 145:22 146:6 147:9 148:2,17 151:16 183:10 184:10 192:13 197:4 guidance 14:10 27:11 55:7 62:1 65:3 71:14,17,18 72:2,6 152:6 185:1 guide 43:10 149:10 guided 43:10,10 guidelines 138:2 154:4 guys 22:22
---	--	---	--	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

H	hey 22:22 152:9	hypothetical 151:22	implication 24:4 24:13	165:17 166:13 167:7 168:8,11
H-y-n-e-m-a-n 155:24	high 111:13 202:20	I	implications 23:18 28:2	169:8,12,25 191:17 192:18
half 30:2,7 43:8 56:20 57:8	higher 10:1 83:15 85:20	ice 20:22	imply 50:22	208:20
143:6 151:23	88:21 128:13	idea 129:22	implying 69:19	increased 38:3
169:11 184:3	133:1 188:21	130:1 153:9	imposed 11:14	124:11 154:10
Hall 1:18 157:18	historically 9:4 92:13	190:7	inability 188:18	increases 6:23
hand 45:14 108:20,22	history 150:13	identification 35:14 37:3	inappropriate 18:18,20	8:11 11:15 16:16
handed 156:16	hitting 136:22	58:3 76:15	include 9:7	17:13 19:20,21
handing 59:23 60:6	hold 132:25	77:2 156:24	26:23 81:19	27:2 82:10
handle 51:14	homeowner 187:22	167:21	110:21 115:12	124:21,23
handled 23:16 119:7	honest 136:4	identifications 174:6	115:15 125:22	135:15 154:25
handles 21:17	Honor 6:17 26:4	identified 61:11	131:2,5,8	155:8 162:17
handling 108:5	28:6 34:13,25	143:4 173:8	included 8:1	163:10 165:7
hands 6:13	37:17 51:9	identifies 64:21	54:14 82:6,8	169:19
happen 85:1 190:9	56:23 70:15	141:2	115:20 135:3	increasing 142:4 165:18
happened 11:19 49:9,10 66:6	72:11 75:25	identify 58:16	150:15 166:3	incremental 11:17 12:15 91:3
66:9 119:20	76:8 79:6	63:24 87:15	178:24	98:17
193:1	85:3 86:16	Ill 2:2	includes 60:14	incur 122:9
happening 49:16	98:3,5 102:24	immediate 127:15	150:10 172:9	131:20 142:17
happens 147:10	123:21 161:13	immediately 23:5 25:3	including 7:17	151:24
happy 18:25	167:1 170:19	impact 10:7	22:5 60:16	incurred 97:20
hard 75:15	172:14,20	17:24 42:6,24	203:13	121:21 122:14
127:12 145:23	173:25 188:12	83:2 124:10	inclusion 148:6	122:17 125:15
harm 136:25	189:17 204:2	127:24 128:1	income 10:16,19	125:23 135:16
harmful 112:5	hope 158:10 205:1	136:24 144:9	50:5 84:4	142:9 144:22
hate 159:8	Hopefully 193:12	144:9 145:1	164:14,21	incurrence 122:2
head 190:8,25	hoping 57:21	151:15 163:20	169:5,7,18,21	independent 151:9
hear 5:19	huge 201:8	164:13,21	inconsistent 104:23 108:25	INDEX 208:1
heard 94:11 154:8	hydrants 58:12 175:23 195:3	193:15,24	115:22	indicate 83:9
hearing 1:7 4:2 6:4,9 38:12	Hyneman 107:15 155:19	impacting 9:5	incorrect 21:2	183:22
70:5,9 76:2	155:23,25	impacts 86:14	199:19	indicated 6:5
204:6 205:3	157:1 158:14	144:18 165:13	200:25	85:4 147:21
held 62:18 83:21 93:15	158:23 159:11	impermissible 11:24	increase 7:3,21	indiscriminate 62:11
hell 28:9	206:25	implement 132:4	7:22 10:9,17	Industrial 6:2
help 44:23	208:15,17	implementation 42:22	11:2,17,21 12:5	inference 41:20
	Hyneman's 109:13,25	implemented 6:25 21:25	12:15 16:5	information 5:1
	140:16 146:12	150:20	17:17,19 19:23	5:8,25 36:24
			32:3,12 36:13	72:16 126:5
			82:17 98:9	143:21 181:5,7
			126:8 142:11	202:1
			142:23 143:4	
			143:12 155:3	
			164:3,8,12,19	

EVIDENTIARY HEARING - Vol. I 11/8/2017

informational 118:21	investment 11:12	item 119:3	15:21,24 16:1	204:3,14
informed 31:8,11	investments 99:3	items 8:14,14	19:4,15 20:6	206:9,14,20
34:3	involve 7:7	9:5 27:13	26:2,6 28:4	207:9
informs 23:25	involved 71:18	31:13 41:10	34:7,11,17,22	judgment 133:8
infrequent 9:6	88:23 89:13	47:11 61:11	37:21 38:2,7,9	judicious 126:20
21:1	89:20 103:23	64:22 65:14	38:12,16,19	July 137:25
inherently 16:24	106:23 107:1	65:15 103:12	45:6,9 46:11	June 28:14
initial 121:5	107:12 120:9	110:17 111:7	46:15,21,24	95:14 125:25
152:20 159:22	involves 6:21	139:4,10	51:6 57:2,4	136:10,20
initially 14:23	57:12	154:12 156:17	59:22 60:8,19	174:3 209:5
inquire 170:5	involving 9:2	J	70:12,16,19	Junior 5:15,19
insofar 165:12	139:20 201:6	J 1:20	72:4,12,24	28:7
instance 58:9	Iowa 76:1	January 10:12	73:1,5 75:21	jurisdiction 69:3 115:20
81:11 120:5,13	irrelevant 13:5	25:6 67:15,19	76:3,7,13	186:20
142:1 165:16	IRS 21:18 29:17	126:15 136:2,9	78:23 79:2,7	justified 163:7
instances 117:11	38:24 39:1	136:20 152:2	81:7 85:9	
119:24	61:24 65:2	176:15 198:4	86:17 87:1	K
instigated 63:3	88:5 181:24	198:10	93:24 97:14,17	K 1:24 210:5,18
63:4	190:23 195:15	Jason 64:2,11,16	97:25 98:2,4	Kansas 20:22
instituting	195:16 196:23	Jefferson 1:9	99:15,21 100:1	89:15,21,23
89:23	197:1 198:2	2:4,12,20 3:3	101:4,7,11,15	90:2,9 165:15
instructed 41:3	199:11	22:5 23:6	101:20 103:1	Karen 31:6
43:21 44:15,18	isolation 163:8	40:17,21 75:13	123:3,11 124:15	63:19 67:22
instruction 8:22	issue 8:8,9 11:1	210:16	134:17 135:11	73:11 202:8,11
instructions	11:23 12:22	Jersey 94:8	145:4,6,10	KCP&L 26:25
139:3	17:2,11 18:2	job 57:9,11	146:1,6 149:5	27:6,7
insufficient	20:4 27:5,14	155:25 171:16	149:7 153:7,23	KCP&L's 26:16
154:19	45:21 46:2	202:22	155:13,18	26:24
intended 149:11	61:9 65:13	John 34:14 35:1	156:15 158:15	KCPL 165:5,19
intent 56:2	97:2 104:16	35:5 159:17,21	158:18,22,25	166:11
intentional	124:11 129:16	159:25 160:11	159:3,6,10	KCPL's 165:5
202:5	130:14 141:3	160:12 206:6	161:8,10,15,19	165:23
interact 71:23	148:5 151:20	207:1 208:3,4	162:13 164:25	keep 38:2 43:14
interested 113:4	163:5 166:18	208:19	165:1 166:23	131:20 189:14
186:4	166:19 182:7	joined 57:7	167:2,4 170:7	199:4
internal 189:21	issued 8:5 97:8	Joseph 173:3,5	170:18,20,24	keeping 76:11
interpret 121:8	122:3 125:24	JR 2:15	172:11,21 173:8	Kellene 1:24
interpretation	133:21 136:14	JRW-1 57:23	173:12,15,19	210:5,18
41:21 61:1 111:3	137:1	58:12 61:12	173:22 174:3,5	Kenney 1:19
114:2	issues 13:5,8	141:1	174:9,14,21,25	33:5,10 51:10
interpreting	18:7 71:19	JRW-2 57:23	175:4 179:12	57:1 74:11 93:2
90:23	106:24 108:18	JRW-3 141:1	179:16 181:11	93:23 130:3
interpretive	113:2 144:20	Judge 1:17 4:4	183:18,19	130:12 134:14
147:1	149:12	4:13,17,23 5:3	187:9 188:22	134:19,21
interprets 68:19	issuing 136:16	5:6,10,14,16	194:4 199:8	135:9 146:6
interrupt 201:3	it'd 53:8	5:24 8:19,24	202:23	
			203:22,24	

EVIDENTIARY HEARING - Vol. I 11/8/2017

179:21 199:4 206:8,14,20 key 28:23 Kim 1:16 4:12 kind 55:7 64:2 64:14,18 70:6 71:20,20 99:4 129:18 131:19 143:25 146:7 179:7 180:11 183:7 196:10 202:20 kinds 69:17 113:2 knew 22:17 31:4 42:3 143:25 know 22:9 33:23 34:2 40:13 48:11 56:5 61:13,14 63:11 65:12 68:3 69:22 81:1 85:4,7,11 85:13 87:9,14 87:20 88:13 89:9,11 90:1,3 90:5,5 92:2 92:21,21 94:3 94:4,12 95:17 95:23 96:5,6 104:12 106:24 112:3,4 114:13 118:1 125:6 126:1 127:7 129:17 130:4 130:23,24 134:10 138:24 140:3 141:19 151:17 176:17 178:1 179:1 183:14 185:23 188:15 189:7,11 189:24 190:22 190:24 192:3 192:4,10,11 193:11,22 194:14 195:4	196:16,25 197:15 198:18 198:19,23 199:13,17,18 200:8,18 201:2,8,13 202:9,13 204:15 knowing 81:16 86:14 202:1 knowledge 36:24 47:25 49:8,23,24 80:21 100:21 102:1,12 106:5 106:14 112:5,9 130:20 141:9 151:19 155:7 161:5,6 172:7 172:8 183:11 known 22:2 25:11 126:5 143:17,18 <hr/> L L 100:6 157:15 208:11,13 lack 62:14 Laclede 22:20 31:25 33:25 33:25 177:13 177:25 178:1,3 186:6 189:3 201:7,11 Laclede's 69:2 186:19 lag 122:9 LaGrand 22:11 47:7 48:4,23 75:24 76:10,11 76:16,20,25 77:18 79:11 86:19 87:3 162:25 163:4 206:11 208:7 208:9 land 175:24	language 113:11 121:8 135:4 large 66:21 107:6 201:23 largely 13:8 late 14:24 28:13 75:9 125:25 law 1:17 2:2,10,11 2:15 4:13,19 58:24 63:14 150:19 151:17 184:21 185:12 lawyer 55:14 83:6 lead 115:14 135:12 Leahy 31:6,11 63:19 67:22 73:11 83:1 learned 202:22 leased 184:8,14 leave 102:6 122:4 leaves 79:8 lectern 15:17 ledger 72:21 left 146:19 160:20 204:10 legal 2:5 3:1 142:16 legislator's 129:19 legislature 21:10 21:25 31:17 129:20 length 122:1 Lera 2:18 5:6 20:10 87:3 lesser 44:18 let's 4:6 33:11 131:25 152:18 188:23 191:10 Letter 208:24 level 11:11 26:22 83:18 133:1 188:21	liabilities 113:24 liability 7:23 25:8 193:25 liable 53:23 187:7 life 7:13,13,15,16 15:3,5 17:4,10 20:17 21:16 29:14 39:7,9 41:17 44:6,6 45:21 46:2 54:17 61:17 69:7 74:1 75:5 75:16 88:18 88:20,21 92:19 128:24 182:1 190:6,25 194:7 195:10,11 195:14,23 196:7,23 198:25 199:3 199:10 light 165:16 201:8,21 likewise 164:11 limited 60:16 115:16 118:10 121:14 192:16 203:14 line 36:2,6,7,10 37:22,23 77:11 77:15,16,17 119:21 157:14 157:18,20,21 160:12,14 167:12 170:12 193:9 lines 35:21 37:24 48:10 102:16 114:12 114:14 117:24 117:25 124:7 132:1 157:16 163:6 165:4 175:20 178:6 195:3 liquid 60:15	203:13 list 6:14 107:5 204:8,15 listed 52:9 107:9 195:5 listing 30:4 72:17 Litigation 1:24 210:7 little 4:6 5:17 49:6 51:13 59:16 96:10 107:17 110:20 121:15 123:11 126:21 140:11 144:24 174:7 202:14 lives 7:9,20,25 9:14,17 14:15 14:16,21 21:7 55:17 74:25 150:20 151:14 184:23 190:2 190:17 196:5 Liz 71:25 72:18 local 10:5 70:2 locally 31:12,21 41:9 64:21 177:18,22 194:23 locate 146:22 located 30:13 30:15,17,20 32:5 39:19 94:7 171:21 189:20 logic 198:20 long 29:12 57:5 64:10 106:17 124:10 156:5 longer 7:7 9:13 48:24 90:24 152:24 199:5 longstanding 23:12 106:9 108:21 109:1 look 28:9 40:4
---	--	--	--	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

41:6 42:9 43:8 43:12,22 48:10 50:7 52:6 54:24 55:6,15,15 59:10,12 62:17 63:16 65:7 66:5 68:21 69:10 86:13 126:8,19 133:11 134:11 140:25 144:9 145:1 149:12 150:12 154:14 178:15 178:17 179:6 179:14,19 193:4 196:12 196:13 looked 58:15 66:12 68:25 73:25 117:20 141:5 144:17 177:10 201:12 looking 33:15 57:23 59:8 68:11 103:2 112:22 113:2 119:16 124:4 131:18 138:2 139:3 151:1 154:20 179:13 180:18 186:3 198:13,14,22 200:5 201:18 201:23 losing 154:9 200:3 loss 86:1 93:16 93:20 losses 117:3 131:19 lost 120:4 154:19 156:17 lot 56:19 71:5 91:25 115:2 Louis 1:14 2:7,16 2:17 4:10 5:14	5:21 6:25 7:11 9:3 10:20,25 12:16 13:11,14 13:16,20,22 14:2,8,13 15:1 15:6,7,12,15 17:3 21:5 22:3 22:6,9,22 23:2,6 25:10 25:13,21 26:1 28:5,7,10,14 28:19,22 29:10 30:12,14 30:18,21,25 31:6,10,24 32:3,6,10,13 32:14,18,19,21 33:2,19 38:25 39:11,14 40:22 40:24 42:19 42:25 43:5 44:5,14 49:7 49:10,16,25 52:7,10,12 61:10 63:19 64:4 68:10,12 69:11,15,16 74:6 79:19 80:1,23 81:6 81:13 82:16 83:3 84:25 85:25 89:10 91:5 92:16 93:7 94:16,22 95:7 97:5 98:2,10,12,18 101:15 102:11 126:9 129:1 141:4 143:20 143:21 144:4 144:15 145:10 145:17 162:1 163:10,24 164:2,3,7 171:1 171:13,21,23 172:1,4 173:10 173:23 176:15	177:12 179:2 181:14 183:23 184:15,18 185:5 187:2,15 187:21 189:21 191:6,11 193:16 196:21 207:5 low 197:21 lower 54:2 80:3 83:15,17,19 84:4,11 85:19 86:7,8,11 166:3 LP 60:17 203:15 lucky 83:8 Luft 2:5 4:21 lunch 123:10,17 <hr/> <p align="center">M</p> <hr/> M 1:19 M-A-C-R 7:9 ma'am 88:25 163:3 167:17 168:3 169:17 MACR 7:9,13,15 7:25 14:14 15:3 41:17 46:2 MACRS 9:13 21:6,11,12,25 25:16 29:16 39:9 42:22 43:9,16 54:17 55:16 61:23 64:23,23 74:1 75:16 92:19 150:20 151:9 176:6,16 184:22 195:12 195:13 196:1 197:7 198:2 199:11 202:11 MACRS' 25:8 Madison 2:20 3:2 magic 135:14 magnifying	58:8 magnitude 11:20 142:11 MAIDA 1:20 mail 176:23 177:7 main 190:10,13 mains 58:12,13 175:23 195:3 maintain 133:1 major 110:3 112:10 122:22 136:23 140:19 150:3 majority 148:4 190:5 making 12:3 24:7,9 62:8 152:14 181:16 186:4 190:10 malfeasance 202:5 management 86:22 116:20 133:7 142:5 150:11 manager 71:8 100:11 171:18 183:22 184:9 mandated 119:23 142:20 manner 22:3 82:14 106:10 manufacturer 190:5 manufacturers 190:7 manufacturing 189:20 190:1 193:2 196:15 March 31:5 57:7 63:23 73:14 marginal 140:21 mark 18:23 34:20 46:11 99:23 100:2,6 102:1 121:1	160:5 206:17 208:11,13 marked 35:13 37:2 74:23 76:14 77:2 100:14 156:22 156:23 158:4 167:18,20 172:3,11,15,22 173:13,22 179:15 markets 23:25 master's 57:18 59:1 match 124:5 matches 122:20 matching 89:1 121:19,22,23 122:21 123:1 material 5:23 10:7 16:7,11 17:25 20:4 143:9 144:16 163:17,20,25 164:17,18 167:7 169:3 196:15 materiality 17:21 49:6,25 50:2 50:9,24 102:3 144:8,12,14 145:3,14,15,20 167:9 169:6,13 169:25 170:1 math 50:18 matter 1:12 4:13 56:9 63:7,8 81:6 129:7 135:23 143:24 144:15 171:23 199:7 matters 6:11 9:9 106:24 204:7 MAWC 21:24 25:4 mean 66:21 67:2,3 68:3
---	---	---	---	---

EVIDENTIARY HEARING - Vol. I 11/8/2017

69:18 71:21 86:5 87:23 90:4 91:22 93:20 95:3,9 110:14 114:4 147:11 148:2,10 151:2 165:19 165:21 186:3 191:13 193:23 198:18,22 200:12 201:3 202:8 meaning 139:19 140:10 means 106:7 137:22 meant 80:10 169:16 170:10 202:10 measurable 126:5 measure 62:6 measures 142:18 MECG 2:14 5:13 10:24 26:11 27:16 MECG's 13:8 medical 120:6 meet 17:21 18:5 50:24 102:2 111:13 133:9 meeting 141:16 meets 120:22 122:21 mentioned 66:13 71:1,3 113:5 168:12 185:15 189:3 Mers 3:1 4:25 4:25 15:24,25 19:12,19 45:7 45:10 46:9,19 70:17,18 72:9 86:17,18,25 98:1 99:23 100:3 101:1	153:24 155:11 158:25 159:1 162:14 164:23 167:3 181:12 183:16 203:23 206:2,7,9,13 206:18,23 207:3,8 met 26:25 meter 195:3 meters 195:4 method 25:12 26:1 56:3 65:5,8 67:17 68:14,19 methodologies 92:11 162:21 methodology 7:2,7 10:21 11:6,18 12:18 17:7 19:24 21:8 22:14 32:18 82:1 91:5 162:8 166:14 methods 17:14 65:6 67:1 Metropolitan 186:22,24 187:17 MGE 89:14,20 90:1 microphone 5:17 middle 36:10 159:22 midway 147:7 Midwest 5:10 26:9 210:6 mill 51:16 million 7:4,5 10:11,17 96:10 96:19 98:13,16 98:20,22,24 143:6,7 151:23 168:12 169:7 169:23 191:12	193:3,4 mind 36:18 101:17 105:16 minor 157:11 minus 96:10 minute 189:17 miscellaneous 105:22 138:3 misleading 32:14 179:7 misreporting 25:9 missed 141:16 Missouri 1:1,9 2:6,17 3:1,4 4:24 6:2 14:5 20:14 21:9,22 21:24 23:7 29:18 30:16 30:24 39:19 43:19 45:20 47:23,24 58:16 59:7 61:19 62:19 68:5 69:24 76:24 83:22 87:7 100:10 119:1,16 120:4 133:20 147:10 147:20 148:4 148:18 149:20 172:18 173:6 182:24 186:10 187:7 210:2,16 Missouri's 42:22 176:19 Missouri- 1:12 10:18 12:13 163:19 178:14 Missouri-Ame... 2:9 4:8,16,20 4:22 6:15,20 9:19 10:6 11:3 12:19 13:7,15 13:18,23 14:7 14:20,25 15:2 15:4,8,14 17:5	17:7 18:12,15 20:14 21:19 35:8 57:13 61:2 63:4 64:10 65:15 68:5,8 70:24 71:9,17 73:1 76:23 83:24 86:20 88:24 94:15 95:24 106:11 127:20 127:25 137:18 143:17 145:8 145:16 149:6 154:13,24 162:24 167:10 171:24 175:25 176:3 177:14 177:25 182:8 182:15,22 183:4,11 186:7 186:15 188:6 188:20 190:21 191:8,13 193:16 199:16,17 201:14 202:6 203:24 206:5 Missouri-Ame... 7:3,21 8:2 9:2 10:3,14,25 13:12,13,24 14:12,16,17 18:4 50:4 60:20,25 69:23 135:16 165:12 186:12 198:7 misspelled 157:15 misstate 92:23 mistake 17:9 35:25 47:22 181:19 mistakenly 160:20 MO 2:4,7,12,16 2:20 3:3	modified 7:8 21:7 29:15 40:1 48:16 52:14 74:16 181:23 Monday 204:18 money 56:6,9 56:19 84:22 85:15,18 154:9 money's 84:13 84:23 85:5 month 25:6 168:19 months 27:22 28:1 121:16 122:17 124:24 134:5 144:25 151:24 168:20 169:9 morning 4:4,6 5:5 6:18 15:25 16:1 20:9 47:1 47:2 51:11,12 87:5,6 93:3,4 101:24,25 130:25 Morris 71:4,25 72:18 move 75:4 121:13 170:4 174:19 188:23 moved 75:16 moving 7:12,15 40:1 104:5 178:8 MSD 186:25 187:6 188:1 multiple 50:23 102:2 multiyear 144:18 148:22 149:1 municipality 187:25 municipally 187:23 <hr/> N <hr/>
---	---	---	---	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

N 4:1 206:1	net 7:19 10:19	210:13	101:10 158:16	officials 10:5
name 4:12 6:18	16:12 50:4	notice 9:19 22:7	158:17 161:11	offset 85:20
28:6 35:3 71:3	84:4 168:23	178:19	161:13,15	offsetting
76:18 100:5	169:5,7,17,21	noticeable	174:23,24	192:20
155:22 159:19	neutral 24:15	192:24	175:1	Oh 26:7 146:23
159:20 171:6,9	never 28:20	notified 28:14	obligation 118:4	okay 20:6 24:6
named 130:5	81:5 101:17	29:12 95:16	observing 6:9	28:12 29:20
NARUC 8:6,13	121:19 130:14	November 1:8	obtaining 90:18	36:1 37:9 38:7
8:25 18:16	131:17 166:18	4:5 70:7	obvious 42:4	38:12 39:11,18
47:9 117:2	166:19 197:21	183:24	109:12	40:22 42:14
127:20 138:25	200:13 202:21	novice 145:24	obviously 69:1	43:1 44:17,23
139:17 140:6	nevertheless	number 40:13	109:24 116:23	45:14,18,25
140:14 153:7	149:23	44:7,8 52:21	occasions 118:8	46:6 49:5
160:13	new 20:13 31:15	55:9 77:15	occur 26:21	52:10,19 56:14
NARUC's 90:13	31:16 41:6,12	96:11 98:18	42:24 111:13	58:22 61:5,14
National 8:5	53:22 56:13	107:6 118:10	126:9	63:2,16,22
137:23	67:24 89:24	120:1,5 132:13	occurred 8:16	67:11 70:12
natural 60:17	90:9 92:17	169:4,18	41:1 129:7,14	71:13 72:9
103:23 178:8	93:14,21 94:8	178:20	131:1	75:21 79:18
194:22 201:7	98:17 150:19	numbering	occurrence 9:5	79:24 80:17
203:14	154:25 155:9	146:18	9:7 122:6	81:3,18 84:3,4
nature 9:6 11:16	202:11	numbers 50:12	occurring	84:12 85:23
11:22 16:25	nice 170:15	50:12 51:14	39:25 102:6	86:5,15 87:25
17:23 58:13	Nicole 3:1 4:25	53:14 124:7	124:24	89:19 90:7,22
182:20	nobody's 168:13	144:12 151:5	occurs 20:23	91:15 94:25
necessarily	non-parcel	156:18 168:17	October 172:24	96:17 97:14,16
86:4,6 109:9	175:18,19	170:11 180:6	odd 55:7	101:20 103:3
112:17 122:22	178:17 191:24	191:25 197:15	offer 46:10	104:3,12
125:19 143:23	208:24	Nuts 145:22	158:13 161:8	110:25 111:15
153:13 190:8	nonrecurring		offered 38:10	114:18 123:2,3
194:14	103:14,15	O	44:18,20	123:7 125:11
necessary 30:8	140:2	O 4:1	47:14 78:24	129:15 132:11
142:18	nonreoccurring	o'clock 121:1	95:2 158:16	132:13,18
need 6:12 12:21	16:10 162:18	123:8,9	174:19,22	133:13 134:15
13:10 35:19	162:21	O-l-i-g-s-c-h-l-...	204:8,11	135:9,14,15,17
37:7 62:1 71:14	noon 123:6	100:7	office 2:11,19,22	139:17 141:9
77:6 78:12	normal 26:20	oath 77:24	5:3,7,20 14:11	143:23 145:1
127:7 140:3	66:15 99:4	78:16 123:14	14:13 15:11	145:10,18,25
201:22 203:8	142:18 160:15	Object 187:5	20:11 28:8	146:25 154:8
204:14,22,23	160:17	objection 74:6	29:21 49:15	155:11 161:25
needed 71:17,19	normally 134:24	85:3,10	87:4 156:4	162:23 163:23
71:19	169:14 180:4,9	102:24 170:8	160:2 171:14,15	171:14,19
needs 118:22	200:1	170:14,17	173:10 175:8	173:14 182:4
157:15,21	noted 9:4 29:12	187:10 188:11	175:10 177:22	183:16 186:12
neighborhood	30:14 78:3	objections	178:21 183:3	186:19 188:1
96:10,18	notes 27:24	38:10 46:13	183:24 184:1,3	194:11 195:9,11
neither 202:8	29:20 66:2	78:25 101:5,6	184:7 210:15	196:25 197:13

EVIDENTIARY HEARING - Vol. I 11/8/2017

199:24	68:9 75:14	outlier 22:6	paid 56:14 82:9	partly 132:24
old 31:17 150:19	107:18,22,25	outline 176:23	97:4,10 98:20	parts 54:25
150:19	111:23 140:13	outlined 176:6	122:16 125:5,8	pass 83:14
older 28:9	141:22 143:16	outside 9:9	129:6 179:25	passed 54:10
Oligschlaeger	147:24 163:15	10:6 47:12,20	188:20,20	82:2,10 83:16
18:23 27:19	opportunity	149:16,24	193:16	pay 16:19 21:2
99:24 100:2,6	104:6 140:25	150:1 152:14	paper 108:4	27:22 53:21
102:8 123:9,13	oppose 10:25	overall 50:14	paragraph	82:7 98:13,24
123:23 126:20	opposed 28:10	190:3	29:24 110:22	120:8,11
128:5 134:17	82:20 145:19	overrule 85:10	111:12 112:18	126:16 143:13
146:5 153:25	opposing 13:11	187:9	147:4 150:8	187:1
155:14 206:17	order 1:13 4:9	oversight 15:6	parameters	paying 53:17
208:11,13	6:22 9:2	15:15 30:25	16:21	56:6 84:8,12
Oligschlaeger's	24:22 28:11	31:1 200:9	paren 38:1	85:25 187:7
101:9	103:24 105:21	owned 175:24	park 84:15	187:15
on.They 192:4	106:22 111:20	176:3 187:22	Parkville 96:7	payment 11:4
once 16:18	114:8,10 119:8	187:23,23,25	96:21	20:12 98:7
68:18 182:6	122:3,10	owners 176:21	part 15:6 16:13	99:7 103:19,19
199:1	124:10 125:24		16:22 18:22	126:4
one-time 92:12	127:5,13	P	19:14,21 33:7	pays 25:4,4
one-way 166:1	133:13,16	P 4:1	36:8,9,10,12	pejorative
ones 94:19	135:22 136:3	P.C 2:2	44:21 48:17	187:13
116:20	136:10,16 137:1	p.m 205:4	60:4 62:20	pending 12:7
OPC 18:7,17	137:13 147:21	P.O 2:3,19 3:2	66:25 109:24	36:11 37:23
70:16 136:20	149:21 169:1	page 8:23 14:3	122:5 129:4	70:8 81:21
158:4 163:7	171:25 193:14	22:11 35:20	133:14,16	91:8 125:22
OPC's 131:25	193:24	36:6 37:22,23	135:5 142:6	people 71:3
163:5 206:24	ordered 118:25	48:10 69:13	147:14 151:3	176:17
OPEB 120:6	120:18 121:25	77:11,14 89:18	202:6	people's 65:18
open 65:6	ordering 106:10	91:16 101:17	participated	percent 10:18
opening 6:13	orders 23:19	102:16 110:21	107:7	16:11 17:21
28:4 30:14	24:3,11 106:23	110:23 112:17	participating	33:14 50:4,16
187:14 206:2	108:6 111:17	114:12,14	6:9	53:24 57:15
206:2,3,3,4	115:15,17	117:24,25	participation	57:16 142:23
operate 88:3	139:20 142:16	119:6,10,21,21	106:21 107:5	143:2,12
operates 17:5	ordinary 11:16	123:25 124:7,7	particular 41:5	164:13,21
21:3,21 45:20	16:13,15,17,23	131:23,25	43:20 79:12	169:8,12,14
61:2 88:17	17:15 20:15	157:14,16,20	84:14 86:10	176:7,11,12
182:8	141:21,22	160:12,14,19	144:14 150:8	179:10,11 180:8
operating 25:4	original 72:17	163:2 165:4	185:2 193:2	180:8,13,14
26:21 112:11	73:19 121:8	167:12 170:12	particularly	197:17,19,21
137:20 143:20	168:5 177:20	172:22 173:23	150:25	197:22
operation	179:22 194:16	174:15,17,17	parties 4:14 6:14	percentage
182:21	originally 47:17	179:13,15,17,18	18:3 70:6	50:17 53:23
operations	47:21 153:3	204:9	77:10 134:11	perfect 121:19
146:20	ought 129:21	pages 146:18	138:21 152:23	period 8:16
opinion 60:20	outcome 193:13	178:12	154:8 174:5	10:12 12:11,25

EVIDENTIARY HEARING - Vol. I 11/8/2017

19:13 29:2,3 29:13,19 30:5 31:18 32:1,12 32:17,22,23 34:1 39:5,6,13 39:21 40:2,19 40:23 41:4 43:4 44:13,21 54:16 65:19 74:4 75:17 77:16 79:20,21 80:1,3,4,24,25 81:9,12,19 82:13 83:11 120:7 127:7,18 128:9 129:5 129:24 136:5 136:6 144:23 151:9 152:7,10 152:20 153:2 162:2,2 178:4 179:4,5 180:22 181:18 181:22 182:9 182:12 183:5 184:11 186:5 189:4,24 191:2 191:9 196:7 periods 7:10,20 33:1 69:16 75:8 129:13 176:24,25 190:1 permission 46:22 permits 8:7 person 16:14 64:3 71:1,4 83:1 personal 21:15 30:13,20 31:10 31:12 32:5 33:8,12 41:9 42:23 43:11 52:13 54:12,18 54:20 55:2 58:18,22 59:3	60:4 61:22 63:8 64:22 65:14 67:14,18 87:16 88:8,11 92:23 95:8 171:17,21 175:9 175:10,13,16 176:2,9,25 177:3,10 183:22 184:17 184:20 185:25 186:16 191:23 208:24 personally 89:12 210:8 perspective 61:18 122:25 pertaining 126:6 pertains 112:18 144:15 145:18 petition 152:9 petroleum 60:16 203:14 phase 128:19 phase-in 126:10 phased 40:18 phone 193:1 pick 61:23 145:16 picky 131:4 piece 62:2 piecemeal 163:20 pieces 34:18 76:9 133:11 pinpoints 139:5 pipe 59:15,15 199:1 pipes 55:1 198:23 place 10:22 24:18 32:16 81:2 93:15 199:1 210:9,14 placed 67:15,18 96:8	places 14:5 15:10 103:11 placing 138:5 plan 102:6,9 planning 204:17 plant 45:21 46:2 72:19,20 96:7 125:8,9 154:25 155:4 155:9 190:10 193:2 Platte 1:14 4:10 6:25 7:14,25 10:20 12:16 17:12,18 19:17 19:20 22:5 32:12 49:7,9 49:15 50:3,7 50:15 61:4 63:5 64:7 69:25 70:1 72:5 74:17 89:4 92:15,16 95:20 96:21 97:6 98:10 102:10 141:4 163:5,8,9 164:12,20 172:1 198:12 198:20 plausible 67:20 68:3 play 195:9 plays 45:3 please 6:10 20:9 34:15 35:3,4 48:9 76:18,19 78:22 97:18 100:4 109:19 123:15 155:21 159:20 163:2 164:6 167:19 171:10 174:8 pleases 16:2 plus 96:10 99:1 191:12	point 26:14 27:19 48:8 51:1 68:22 70:7 107:14 118:2 123:18 127:14 135:16 135:18 154:15 154:18 181:9 187:14 196:18 197:23 police 23:3 policy 23:12 24:9 107:20 135:23 147:17 political 187:6 pooled 32:11 portion 44:19 170:1 204:6 portions 95:21 position 13:14 15:9,13 19:16 19:17 20:12,18 23:11 24:1 25:2 31:7 32:9 34:5 49:21 94:16 104:20 105:8 126:2 143:24 152:13 154:15 184:5 184:12 186:20 196:19 positioned 49:4 positions 9:18 104:7 possible 152:8 185:10,14 191:1 191:4 possibly 164:16 post 120:6 potable 190:19 potential 26:19 42:24 105:17 potentially 137:6 power 72:20 72:20 165:15 practice 75:18	106:9,13 108:21 109:1 131:2 147:9 preauthorizati... 47:9 90:12,14 117:7,13 preceded 184:22 precedent 16:8 62:17 63:9 predecessor 9:3 66:3 predictable 21:4 prefer 137:4,4 preparations 71:5 prepare 45:11 45:15 77:19 88:12 100:13 156:10 160:4 160:22 167:23 prepared 12:3 34:18 35:12 36:19,19 37:4 37:9,13 77:1,19 77:23 78:9 156:11 171:22 preparer 14:12 64:1 preparing 62:24 67:9 prescriptions 118:9 present 81:12 102:9 109:5 110:11 171:2 199:17 210:8 presented 104:19 108:16 111:8 166:19 presenting 6:6 President 2:5 Presiding 1:16 presumably 128:13 134:1 148:14 149:15
--	--	--	--	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

182:22 presume 58:18 58:20 presumption 67:16 pretty 155:3 previous 119:9 131:1 143:7 previously 6:3 15:4 17:13 28:15 156:8 189:18 Pricewaterho... 149:9,25 150:2,6 Pricewaterho... 112:8,9 146:17 147:19 primarily 7:7 11:11 128:22 primary 8:8 184:13 principle 89:1 122:21 principles 23:21 62:7 110:10 119:23,24 print 58:5 prior 14:19 36:14 41:18 47:10 66:4 74:9 77:10 80:22 95:10,10,13,18 127:16 151:18 183:25 184:4 185:2,4,12 189:16 private 188:6 privy 68:1 probability 23:24 24:5,13 24:15,24 probable 86:24 111:11,25 133:10 148:1 probably 47:22 70:8 96:9	97:8 106:15 113:14 130:6 133:18 135:21 140:8 154:11 190:12 problem 56:11 63:13 82:15,18 105:6 109:10 129:14 137:6 140:19 144:1 procedural 6:11 204:7 procedure 32:20 procedures 32:25 proceeding 19:14 35:12 36:2 100:15 126:25 proceedings 1:6 210:8,11 process 51:19 54:5 62:21 65:19 68:11 75:10 200:23 products 60:16 60:17 203:13 203:14 professional 81:15 profitable 84:8 profits 131:19 progress 7:18 8:2 prohibit 132:3 projected 27:1 81:23 165:25 166:3 promoted 184:9 prompted 129:21,23 pronounce 29:16 proof 27:1 68:16 68:20 propane 60:17	203:14 proper 14:15 25:12 29:10,11 30:5,9,16 32:6 67:17 106:2 properly 30:20 201:24 properties 38:25 62:13 property 1:14 4:9 6:23 7:3 7:14,18,21,22 8:3,10 9:21 10:1,2,9,17 11:2 11:4,9,15 12:5 12:15 13:16,20 13:24 14:1,6,9 14:17,21,25 16:5,15,16,18 17:3,13,14 19:23,25 20:13 21:3,8 21:14,15,18 22:19,20,21 23:7 25:9 26:17,20,24 27:2,3,21,22 28:16,16,20 28:24 29:7,9 29:10 30:5,13 30:17,20 31:10 31:13 32:5 33:8,12 38:3,4 39:8 41:9,15 41:16,17 42:24 43:11,11,13,13 44:7 52:13 54:2,12,18,20 55:2,3,12,18 58:3,9,17,19 59:2,3,11,12,17 60:1,4,12,14,14 60:21 61:9,15 61:22,25 62:2 62:7 64:22 65:14 66:18	67:14,18 69:4 69:8,17 72:8 72:21 73:16 74:12,12 81:24 83:13,17 84:20 85:5 86:7 87:16,16 87:17 89:15 92:20 95:8 95:20 98:20 103:17,20 117:2 124:11,21 124:23 125:4 125:8,15,23 126:4,6,8 128:13 129:5 131:3 141:2,3,7 142:24 143:13 143:19 151:1,6 154:10,25 155:8 162:17 163:12 165:7 165:13,18 166:2,12,13 168:22 169:2 169:10,19,21 171:17,21,25 172:18 175:10 175:13,13,15,16 175:18 176:2,9 177:1,1,3,10,13 177:15,17,21 177:24 178:2,7 180:7 183:23 184:18,20 185:3,12,22 185:25,25 186:8,16,17 187:15,16 188:3,7 191:12 191:23 192:19 193:15,21 194:10,11,17 195:2,7,7,24 198:7,8 199:15 203:5,8,11,12 203:20	208:20,24,25 proposal 165:24 propose 18:20 34:20 proposed 12:9 106:11 108:4 167:9 proposing 92:17,18 proposition 32:9 protect 166:2 protested 70:4 prove 68:16 provide 28:25 30:8 43:22,24 47:5 52:5,23 90:21 111:19 118:24 134:24 147:25 178:19 178:23 191:21 191:22 192:23 provided 5:2 52:6 72:18 73:18 85:17 191:25 provides 44:5 provision 142:7 PSC 27:10 PSC's 27:12 public 1:2 2:18 2:18,19,22,22 3:1,4 4:24 5:3 5:7 10:24 11:23 12:21 13:4,9 20:11,11 20:18 23:11,14 25:2 26:11 27:16 33:20 46:21 87:1,4 100:10 110:12 110:14 111:8 112:1,18 116:4 116:22 119:3,17 120:23 126:23 132:22 133:22
---	--	--	---	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

143:11 146:1 148:7,11,11 155:15 156:4 159:12,14 160:2 publication 190:23 195:17 196:2 197:2 publicly 83:21 83:25 pump 58:10,11 purchased 176:14 180:1 198:3,9 purpose 48:7,14 purposes 28:17 35:14 37:2 74:2,11,20 77:2 110:13,15 111:9 116:5,22 120:20 122:1 125:21 126:10 127:18 132:18 133:2,3 144:8 148:20 151:21 152:20 175:14 189:23 pursuant 30:3 32:23 pursue 22:8 pursued 22:10 Push 5:17 put 41:7 54:7 132:7 142:2 154:24 166:9 168:17,19 195:15 putting 32:13 81:23 PWC 146:25 149:12,15	115:7 137:19 163:25 164:14 quarter 121:17 question 12:24 19:5 33:6,19 35:22 36:7,8 36:9,13 41:16 41:16 42:2 45:22 48:12 48:24,25 51:3 52:16,19 69:5 70:20 71:21 87:21 91:19 92:10 93:5 103:6 111:25 113:17 115:11 116:6 117:5 120:20 121:22 130:10,13 134:20 135:13 145:18,19,20 145:21 147:1 153:6 164:6 165:16 167:12 182:5 183:10 187:5 191:6,10 191:18 193:12 197:4 questioned 68:24 questioning 25:12 188:23 questions 15:17 15:19 16:3 18:24,25 19:2 26:3 33:3 37:13,18 38:18 38:20 45:5,18 46:20 47:13 51:5,6,8,10 56:24 57:2,4 69:1 70:13,14 72:25 74:10 75:20 77:23 78:14,20 86:16 92:25 93:1,2,24,25	97:15 99:14 100:23 101:16 101:18,19 121:2 128:3,4,7 130:12 134:18 135:11 141:15 141:18 145:7,7 146:3 149:4 150:17 153:22 158:2,11,24 159:5,6,9 161:1 161:12,13 162:12 166:22 166:24 170:4 179:21 181:9 189:18 194:3,4 194:5 202:24 203:1 204:1,2 206:8,9,14,14 206:19,20,20 206:21 207:9 quick 19:4 34:8 60:9,10 64:21 91:15 93:25 99:18 quicker 123:1 137:4 quickly 121:2 146:3 quite 92:15 142:15 quote 15:5,6 26:20 27:9 92:9	raising 163:12 rare 26:24 143:14 rate 9:25 10:15 11:13 12:7,8,12 13:3 17:4 19:10 19:14 24:16 25:1 27:24 29:11 32:6 36:11,14 37:23 51:16 81:18,20 82:4,8 83:10 83:15,15 88:23 91:8 93:14 113:24 114:3,8 115:7 115:10,15 116:7 116:8,18 119:7 125:3,12,22 125:24 127:11 127:12,16 129:12,13 131:3 131:11 133:14 134:2,3,6 135:24 137:1 137:10,15 138:13 142:22 142:23 143:19 147:15,23 151:14 152:11 152:15 154:20 165:5,7 168:20,21,22 169:11 179:6 180:2,6,11,12 180:15,21 182:23 199:7 ratemaking 11:25 12:2,20 18:18 23:12 24:7,9,19,25 47:6,18 89:2,3 111:19 120:8 121:6,9,11 135:5 137:8 149:22 150:10 152:14	ratepayers 84:10 rates 10:3 12:11 15:12 24:2 26:23 27:25 31:23 35:24 53:17,22 56:13 76:24 79:11,15,16,16 82:6,7 83:19 84:11 86:2 93:14,21 115:12 124:12,25 128:16 131:15 150:15 165:24 166:4 191:14,19 192:5,22 193:5 ratio 125:8 rationale 120:13 reach 169:13 read 67:10,12 87:12 95:3,4 102:19,21 104:6 109:11 109:13 118:14 124:7 141:17 160:17 190:22 reading 102:13 reads 160:13,15 190:25 ready 34:12 171:1 real 21:15 22:19 43:13 55:2 59:17 60:9,10 60:12,13,21 61:25 63:8 64:21 87:15 91:15 92:20 92:22 175:12 175:17,18 176:2,8 177:2 177:10 178:17 185:25 186:17 191:23,24 203:7,11,20
<hr/> Q <hr/> qualified 148:6 148:9 qualifier 114:3 qualify 27:10,13		<hr/> R <hr/> R 4:1 35:5 155:23 160:11 206:6 208:3 208:4,15,17 210:1 R-i-l-e-y 159:21 race 152:22 railroads 31:21 196:16 raised 18:7 raises 27:20		

EVIDENTIARY HEARING - Vol. I 11/8/2017

208:24	recall 26:15	74:5 76:19	162:2,2	82:8 132:22
realization 17:8	103:22 125:18	90:12 100:5	176:24,25	reflected 128:15
realize 24:11	128:7,8,11	101:2 102:22	178:4 179:4,5	148:19 151:5
200:20	142:1 146:5	102:25 103:5	179:10 180:22	regard 13:7,18
201:22	147:18 150:22	109:12 123:12	181:2,18,22,24	32:10 33:24
realized 180:23	155:10 197:1	194:6 202:18	182:9,12 183:4	regarded
200:24 201:15	receive 47:4	204:24 205:2	186:5 189:4	120:19
realizing 25:15	178:18 193:1	recording 30:17	189:24 190:1	regarding 18:10
really 5:18 16:15	received 23:7	138:5	191:2,9 196:6	42:20 74:24
23:1 47:6	38:14 46:17	records 122:18	recross 70:13	79:25 83:8
55:24,25	79:4 101:13	recover 24:1	97:17 166:25	126:24 130:15
56:4 63:12	158:20 161:17	124:23 133:5	203:1	136:22 153:7
120:13 130:1	170:22 172:24	142:19 166:12	Recross-Exa...	188:17 191:6
140:20 141:11	173:9 175:2	recovered 21:15	70:18 72:14	regardless
143:25 144:15	201:11 208:1	35:24 129:6	97:19 145:12	73:22
154:17,19	recess 34:8	131:15,17	146:4 149:8	regards 45:19
166:5,8 186:4	99:18 123:7	recovering	203:3 206:9	regular 184:6
189:25 201:25	recipients 85:6	56:9	206:10,15,21	regulated
202:9	recognition	recovery 7:8,10	206:22,22	146:20
reason 20:16	120:22 135:18	7:20 12:11	207:9	regulation
31:14 41:11	162:9	17:10 21:7	rectifying 181:19	151:17 194:13
67:23 111:4	recognize	23:24 24:6,14	recurring 103:18	199:24
132:15 152:18	108:23 109:22	24:15,24	103:20 149:1	regulations
168:6 198:6	136:18	26:19 29:2,3	redirect 73:3,7	18:14 137:17
201:17	recognized	29:11,13,15,19	98:4,6 153:23	194:16
reasonable	121:21 136:14	30:6 31:15,16	153:24 167:4	regulator 114:25
68:15 88:14	recollection	31:19 32:1,12	167:5 187:10	115:13
119:25 121:7	125:17 130:17	32:16,22,22	206:10,15,23	regulatory 1:17
122:1 135:19	recommend	32:25 34:1	207:4	4:13 8:6 23:19
reasonably	23:17 48:22	39:5,5,13,20	reduce 168:14	23:23 24:12
26:23	127:1 134:23	41:4,12 43:4	reduced 168:21	48:2,18 62:1
reasoned 27:12	recommendat...	44:13 54:16	redundant	62:15 86:21
reasons 182:19	154:5	56:11 67:24	141:19	90:13,24 91:6
185:16	recommendat...	69:16 74:3	refer 28:12 89:6	104:25 105:4
rebuttal 5:22	151:4	75:16 79:20	97:1 154:9	105:7,11,16,19
27:20 42:12	recommended	79:21 80:4,24	reference 119:6	105:21 106:4,6
50:20 77:10	108:8	80:25 81:19	124:3,5,6	108:24 109:6
101:9 102:15	recommending	82:13 83:10	165:4,16	111:4,16,17
102:17 109:13	24:20 105:12	86:24 111:24	referred 7:10	112:23 113:9,13
123:25 146:16	122:13,23,24	111:25 128:9	160:20	113:19,25 114:7
157:5,12 158:3	135:6	129:24 133:10	referring 8:20	114:19,22
159:23 160:7	reconvene 34:9	133:15,19	79:17 81:20	115:14 116:17
165:3 170:12	123:7	134:2,13	102:14 120:12	116:21 117:12
171:22 172:9	record 4:7,15,18	138:13 142:9	166:9	119:17 120:17
172:16,23	23:19 24:4,12	147:16,23,25	refine 170:11	120:19 132:18
182:5 208:11	35:4 37:22	148:6 149:22	reflect 4:18	133:2 137:24
208:15,19,22	48:17 63:25	150:20 151:9	23:22 74:6	138:10 149:23

EVIDENTIARY HEARING - Vol. I 11/8/2017

rejected 27:6	184:17 208:25	121:6	57:11 151:1	70:20,24 74:5
rejection 74:6	reported 1:23	requests 18:4	176:20 178:10	94:21,25
relate 96:20	21:20 50:5	45:12	responsible 14:1	108:3,3 112:14
related 1:14 4:9	53:15,16	require 18:15	29:23 79:14	112:16 204:19
8:14 39:9	178:13	47:9 117:6,13	87:15 88:1,6	reviewed 33:19
49:16 91:3	reporter 5:2,9	153:13	180:20 184:19	58:15 67:7
130:19 141:25	5:22 76:15	required 29:3	rest 76:1	73:23 83:7
171:25	155:22 156:14	90:12 128:20	restate 91:19	109:24
relates 144:14	156:17,24	151:17 153:19	restricted	reviewing 113:4
relationship	159:20 167:21	189:14	144:22	189:13
49:6,8 146:8	210:6	requirement	result 10:10	reviews 71:6,7
relatively 136:5	reporting 21:24	21:2 43:17	15:15 39:3	revised 14:4
relevance	22:2,3,4,6	90:20 109:4	86:8 96:2	29:18 30:23
127:24 128:1	26:1 32:5,20	117:16 125:14	113:24 126:9	137:25 139:2
relevant 24:17	32:25 33:6	154:18 185:1	128:14	140:6
126:5 129:17	39:1 44:21	requirements	resulted 10:1	revisions 12:3
154:16	52:14 53:8	18:5,14,16,22	resulting 6:24	94:16
relied 13:22	72:20,22	160:15,16,18	17:24 38:4	right 6:5 39:16
28:22,23	74:12 86:21	requires 116:17	151:5	42:17 48:16
30:12 31:1,2	88:17 110:18,19	requiring 32:15	results 39:4	53:6,18,24
relief 13:6 47:3	147:4 148:11,12	32:19	86:10 88:20	55:10,11,13
rely 182:15	178:2,16 181:3	resident 85:25	168:1	56:1,10,15,16
remainder 77:16	182:22 200:16	residential 13:19	retaliate 188:24	58:5 82:21
remember	201:1,12,16,24	residents 84:25	retirement	83:23 92:16
50:14 89:17	reports 13:16	residual 74:14	120:6 158:9	98:25 102:14
142:1 196:10	33:8 38:24	74:18 197:16	retroactively	102:19 104:15
remind 6:8	178:3	resolution	153:1	109:22 113:18
123:14,15	represent 20:10	108:12,17	return 14:22,22	114:11,17 115:3
reminder 40:18	87:4 92:12	respect 40:22	14:23 30:4	116:19,23
reminds 40:16	99:22	50:11 66:17	42:1 185:22	124:6 127:13
removed 121:10	represents	69:12 74:10	189:13	127:21 130:9
reoccurring	10:18	74:22 77:5	returns 14:8	130:10 132:6
16:17	request 6:3,7,21	98:7 108:23	62:25 64:4,6	134:8,15
rep 31:8	11:1,24,24	respectively	185:17 186:2	148:23 149:18
Repeat 164:6	13:12 18:19,22	34:21	189:15	152:15 165:14
replaced 77:12	20:5 26:17	respond 126:23	revenue 16:12	166:15 170:20
replacements	27:3 45:15,19	responded	86:9 125:14	172:15 174:25
77:12	46:1,7,12	182:11	154:18 191:13	185:18,24
report 25:18,19	74:22 105:2	response 38:11	192:17	186:3,5
29:4,9 31:22	121:11 142:13	45:25 46:14	revenues 120:4	193:23
33:12,13 39:2	163:16 165:5	70:19 79:1	137:20 188:19	202:23
44:11 50:5	165:11,12,20	94:14 147:1	191:7,17 192:19	204:25
51:15 52:20,21	208:6	responses	193:8	rightfully 55:6
53:3,20 88:2	requested	45:12	reversed 35:23	Riley 122:12,23
176:22 179:21	124:22	responsibility	review 60:10	126:23 159:15
179:22 181:17	requesting 19:6	14:5 15:10	63:10 65:21	159:17,19,21
182:16,20	47:18 95:25	25:8,18 30:3	65:24 66:2	159:25,25

EVIDENTIARY HEARING - Vol. I 11/8/2017

160:12,12 161:7 161:22 162:15 165:3 167:6 167:24 170:25 207:1 208:19 Riley's 170:12 ringing 104:1 risk 148:25 road 2:6 152:8 Robert 2:15 5:15,19 28:7 role 45:2 113:1 rolled 191:16 rolling 192:11,13 roughly 53:5,10 53:10,24 56:20 98:23 142:23 143:12 routine 11:10 RPR 1:24 210:18 rule 86:20 142:2,6 rulemaking 142:2 153:13 153:20 rules 132:2 137:16 ruling 91:23,24 Rupp 1:20 33:18 34:6 130:5 141:15 145:4 148:21 206:21 Ryan 2:18 5:6	saw 50:13 saying 11:4 19:6 20:16 24:14 24:22 42:7 43:15 55:20 83:2 125:19 132:10 179:10 179:24 202:10 202:11 says 13:22 24:6 25:23 29:22 40:17 41:8 42:19 67:5 74:17 88:13 146:25 147:8 195:13 200:18 scale 190:21 scenario 136:19 137:9 149:3 150:8 scenarios 136:7 schedule 19:7 31:14 38:24 41:6,19,21 53:4,8,16 54:8 54:9,11 56:4 57:23 58:12 61:11 63:17 67:25 73:10 93:12 109:18 110:20 112:8 137:12 141:1 146:16 176:6 176:16 195:12 195:13 196:23 202:11 204:21 204:22 schedules 14:18 31:16,16,21 39:2 40:20 41:10,12,18 42:23 52:23 school 23:1,5 84:15,15 188:18 192:2,3 192:15,25 193:7 202:20	scope 152:14 SCOTT 1:20 se 113:11 149:14 seat 46:23 seated 76:7 100:1 155:18 SEC 23:22 110:18 112:21 133:2,6,8 second 16:6 18:17 27:12 30:2 36:9 41:23 48:16 61:6 77:14 147:3 179:17,18 section 14:4 54:19 55:4,6 55:13,16 59:23 67:12 67:13,16 177:20 184:8 Sections 30:22 32:24 see 22:16 31:4 31:14 40:5 41:11 50:17 57:25 66:7,8 66:11 67:23 68:21 69:10,10 71:23,24 90:3 91:15 105:5,6 108:20,21 109:9 120:25 121:16 122:22 123:8 124:12 132:1 139:8,20 146:17,25 147:5 161:25 172:20 179:5 180:8 199:2 200:6 202:25 204:10 Seeing 6:13 46:15 79:2 101:11 158:18 161:15 174:25 seek 12:4 72:2	99:6 132:18 132:25 134:1 138:13 seeking 6:23 11:15 12:20 48:1 90:24,25 121:9 132:3 166:12 seen 50:11 82:24 83:5 109:23 143:11 148:25 149:1 170:15 self 25:18,19 43:23 182:16 182:20 self- 13:15 self-report 13:20 self-reporting 17:8 28:21 30:11 32:7 33:20 143:19 176:19 181:4 186:9,11,11,13 201:25 Senate 130:6 senior 2:18,18 35:10 57:10 108:3 sense 9:24 116:12 138:11 sentence 36:1 147:8,12 157:17 160:14 separate 50:12 50:17 113:6 120:22 163:11 163:13,14 192:1 separately 144:10 September 26:16 seriously 136:8 service 1:2 3:1,5 4:24 67:15,19 79:15 94:7	96:8 100:11 services 1:24 23:2 35:8 57:6 71:11,13 84:24 85:17 86:1 210:7 set 12:12 29:14 54:17 70:8,8 165:24 181:23 192:22 204:23 210:9 sets 21:18 110:9 seven 93:12 129:25 139:4 151:18,23 180:25 181:1 199:21 200:8 201:1 seven-year 7:12 14:21 29:2,19 31:18 32:22 41:19,21 44:6 53:4 54:8 56:12 69:7 74:3 79:20 80:4,23 83:10 88:21 128:9 142:21 179:4,9 180:7 183:4 185:2 197:9,13 200:14 sewage 60:18 203:15 sewer 105:20 106:2 186:22 186:24 187:17 187:21 share 60:9 shareholders 84:1 She'll 33:3 sheer 11:20 sheet 110:22 159:23 168:4 168:16 210:10 Shemwell 2:18 5:5,6 20:7,8
S				
S 1:16 4:1 159:17 159:21,25 160:12 207:1 208:19 S-t-r-a-i-n 171:11 safe 142:10 Sansone 21:23 31:8 64:2,11 72:15 173:3,6 173:7 Sansone's 64:16 178:16				

EVIDENTIARY HEARING - Vol. I 11/8/2017

20:10 26:5	62:12	87:23 98:16	203:17	64:4,5 68:10
59:19 60:6,8	simple 25:25	99:2 116:14	specifics 90:6	68:12 69:11,15
87:2,3 92:24	50:18 114:21	124:18 141:16	92:22	69:16 74:6
97:18,19,24	simply 12:14	145:13,14	speculate 130:2	79:19 80:1,23
101:20 156:20	17:8 21:1	146:23 157:21	speculation	81:6,13 82:16
159:14,18 161:7	24:24 90:25	169:17 174:18	188:12,16	83:3 84:25
167:5,18,22	91:7 128:12	178:11 179:19	spell 100:4	85:25 89:10
170:3 174:7	148:17	201:2	155:21 159:20	91:5 92:16
175:5,6 181:8	single 102:6,9	sort 103:17	171:9	93:7 94:16,22
187:3,13	sir 35:9 57:3	144:21 147:9	split 168:7	95:7 97:5
189:19 203:2	75:19 92:25	169:4 170:11	spot 91:16	98:2,10,12,18
203:3,21	99:13 153:21	192:15,19	spreadsheet	101:15 102:11
206:3,13,15	165:9 166:21	sought 13:1,6	44:11 178:25	126:9 129:1
207:2,4,7,9	situated 62:12	72:5	spreadsheets	141:4 143:20
shift 9:16	situation 92:15	sound 123:16	168:18 178:18	143:21 144:4
shifts 92:13	143:15 145:17	sounds 72:3	SR-2017-0286	144:15 145:10
short 56:18	149:1,2 150:5	source 105:25	38:1	145:17 162:1
136:5	situations	106:1 115:5	SR-217-0286	163:10,24
shortchanged	148:22	118:11	36:12	164:2,3,7 171:1
23:3	six 197:15	Southwestern	ss 210:3	171:13,21,23
shortchanging	size 155:4	177:16	St 1:14 2:7,16,17	172:1,4 173:10
187:4,8	182:21	span 17:10	4:10 5:14,21	173:23 176:15
shorter 152:23	sketchy 141:10	speak 108:12	6:25 7:11 9:3	177:12 179:2
Shorthand	slash 146:20	118:15 121:14	10:20,25 12:16	181:14 183:23
210:6	slight 66:24	132:20 158:10	13:11,14,16,20	184:15,18
shortly 122:16	67:1	163:14	13:22 14:2,8	185:5 187:2,15
135:21 136:13	slightly 139:18	speaker 124:16	14:13 15:1,6,7	187:21 189:21
show 21:22	small 58:5	speaking 12:8	15:12,15 17:3	191:6,11 193:16
25:11 158:10	smaller 187:21	124:18	21:5 22:3,5,6	196:21 207:5
166:7 168:17	190:21	speaks 111:1	22:9,21 23:2	staff 3:4 4:23
168:24	Smith 2:18 5:6	special 84:15	23:6 25:10,13	5:1 10:24 13:9
Sibley 106:22	46:22,25 51:5	130:18 192:2	25:21 26:1	17:12 18:8,9,17
106:24	101:10,21,22	specially	28:5,7,10,14	18:19 19:10
sic 25:8 114:12	101:23 103:1,3	185:23	28:19,22	26:11 27:17
193:17	103:7 123:2	specific 21:16	29:10 30:12,14	45:6,12,14
significant 96:6	146:2,4 149:4	54:20 62:22	30:18,21,25	70:16 71:4
169:24	155:20 156:13	63:7 105:19	31:6,10,24	74:22 97:25
significantly	156:16,21,25	132:15 135:2	32:3,6,10,13	99:21,23
7:20,22 10:1	158:12 206:8	142:17 153:15	32:14,18,19,21	102:20 104:24
silence 6:10	206:18,22	177:9 197:1	33:2,19 38:25	104:24 105:9
123:15	sole 8:9 15:10	specifically	39:11,14 40:22	105:12 107:23
similar 31:24	18:2 83:9,11	24:6,11 52:17	40:24 42:19	108:8 112:2
33:24 69:4	solely 12:15	59:8 61:10	42:25 43:5	121:16 122:24
112:14,14	sooner 129:3	125:18 128:11	44:5,14 49:7	125:20,22
113:14 118:14	sophisticated	129:1 130:24	49:10,16,25	130:15 134:23
150:14 170:11	21:19 182:25	137:17 184:10	52:7,10,12	140:12 150:25
similarly 21:16	sorry 40:6 80:9	201:6 203:8	61:10 63:19	153:23 162:13

EVIDENTIARY HEARING - Vol. I 11/8/2017

167:2 181:11 184:19 203:22 Staff's 19:15,17 46:12 101:8 104:6,20 125:3,14 136:12 154:4 163:6 206:16 stand 18:24 33:2 34:14 99:24 123:8 123:13 standard 26:13 27:18 135:4 139:9,23 140:1 145:3 standards 16:9 108:23 109:7 109:9 stands 28:10 34:4 start 25:5 79:9 121:25 122:13 126:24 127:1 127:17 started 184:6 189:12 196:18 starting 56:13 73:8 135:7 136:19 176:16 starts 173:2 197:19 state 1:1 25:15 35:3 69:24 70:5 76:18 85:9 98:21 100:4 109:3,7 111:7 118:3 148:17 155:21 159:19 171:6 176:20 177:17 177:19,20 183:15 185:9 187:6 194:16 194:23 210:2 210:16 stated 17:13	47:21 70:19 85:11 86:7 89:12 111:18 182:4 statement 28:25 30:2,7 30:7 31:2 35:24 41:24 83:9 103:4 104:6 105:8 111:5 113:16 114:21 187:14 206:2,2,3,3,4 statements 6:13 28:5 30:15 110:12 119:4,18 120:24 132:23 133:22 148:7 states 21:13 22:12 41:8 110:4 111:14 112:12 118:7 statewide 21:11 21:25 25:16 42:23 stating 19:16 163:7 stationary 60:14 203:11 status 10:8 69:22 statute 13:24 14:14 15:10 23:8 25:17 29:3,18 32:16 43:12,13,23 54:9,19,25,25 55:13 56:24 59:17 60:7 61:21 65:1,3,7 68:19 74:17 82:23 87:18 87:19 88:13 91:22 128:7 151:10,11 176:13 182:2 185:8 194:13	194:15 statute's 61:19 statutes 14:4 21:10 29:18 30:23 43:9 58:16 59:7 67:7 83:6 87:7 176:22 statutory 43:17 185:1 stay 191:14 stayed 70:10 Staying 149:9 STC 198:19 201:6,20 Stenotype 210:11,13 step 71:17 STEPHEN 1:19 steps 22:23 Stoll 1:19 15:19 19:2 26:3 51:8 93:1 128:4 130:8 150:17 159:8 206:19 storage 60:15 89:21 203:12 storm 20:23 storms 144:21 straight 65:16 Strain 5:20 14:3 25:13 29:21 31:7 33:2 40:8 42:13,15 171:4 171:8 172:23 173:16 174:1,12 175:7 176:10 181:13 183:21 193:13 194:5 204:4 207:6 208:22 209:2 209:6 Strain's 40:4,14 Street 2:20 3:2 strict 118:20 120:3 strictly 52:13	strike 35:21 36:9 37:22 strong 133:14,18 struck 36:12 48:12 77:12,17 stuck 56:17 studied 95:4 subcategory 105:17 subdivision 187:6,23 subject 7:22 18:13 37:19 78:20 127:20 152:21 158:1 188:3,7 submit 8:12 submitted 6:3 65:17 94:22 108:2 172:12 173:7 subpoint 45:23 subsection 67:13,21 199:9 subsequent 42:1 substantially 9:13 112:14 158:6 161:2 sudden 11:5 92:2,9,12 Sue 29:21 suffer 131:12,13 sufficient 147:25 148:19 suggest 13:17 123:6 150:7 suggesting 23:14 24:10 105:9 suggests 140:17 Suite 2:20 Summit 103:23 supervised 107:10 supervision 36:20 37:10	77:20 107:15 supervisor 107:13 184:7 supply 58:12 support 41:24 supported 23:4 supposed 33:13 58:2 65:2 179:22 192:21 sure 42:18 48:10 62:8,10 66:6 75:3 79:16 86:3,3 87:22 91:14 93:6 102:14 102:23 108:15 113:10 131:10 134:22 142:19 143:2 148:16 149:13 151:2 176:22 181:6 181:17 186:4 201:13,24 204:9,19 surprise 125:19 surrebuttal 34:19,24 37:4 41:7 63:18,20 69:13 73:9 76:10 78:6,13 89:17,18 91:14 91:17 101:9 102:15 109:13 114:11,14 115:25 118:1 126:22 131:23 140:17 157:6 158:3 162:24 208:4,9,13,17 surrounding 22:15,18 23:5 148:18 Susan 5:20 33:2 42:12 Suzanne 14:3 42:15 171:4,8 172:23 173:16
---	---	--	---	--

EVIDENTIARY HEARING - Vol. I 11/8/2017

174:1,12 207:6 208:22 209:2 209:6 Swearengen 2:2 4:19 sweeping 18:21 23:15 switch 126:21 sworn 34:16 76:6 99:25 155:17 159:16 171:3 system 8:5,13 21:13,13 29:16 31:18 64:23 65:2 72:21,22 105:23 113:12 127:21,23 153:7 181:24 systems 118:22	112:21 119:22 126:21 130:9 165:5 talked 42:5 79:25 95:9 115:6 148:21 talking 27:21 28:1 40:11 53:13 54:21 59:7 61:9 65:14 75:12 80:2,8 88:8 88:10 92:4 93:8 98:22 106:25 110:23 137:17 145:13 145:14 150:18 152:17 168:7 169:3 178:12 203:5 talks 41:5 43:23 43:24 117:2 194:17 Tammy 31:8 40:9,16 41:8 42:4 63:24,25 67:4 73:11 75:11 82:25 83:1 173:16,21 174:2,12 202:8,10 208:24 209:1 209:4,5 tangible 21:14 30:4 87:16 tax 6:23 7:3,18 7:22,23 8:10 9:21 10:2,2,10 10:17 11:4,13,13 11:16 12:5,15 13:16 14:12,17 14:25 16:5,18 17:6 21:8,12 21:23 26:1,17 27:2,3,21,22 28:16 31:8 32:3,11 33:20	35:10 38:3,4 49:3,3 51:17 54:2 57:10,12 58:25 64:3,11 69:24 70:5,10 70:25 71:8 72:8,20,22 73:16 74:12 79:16 81:15,24 82:15 83:10,15 83:15 86:1 89:24 90:2,9 92:11,14 124:21 124:23 125:4 125:15,23 126:4,10,16 128:13 142:21 142:22,24 151:6 154:10 161:22,25 164:12 165:7 166:12,13 167:7 168:6,11 168:13,14,19,21 168:22,22,23 169:2,10 172:18 177:19 177:20 178:22 183:15 188:3,7 191:12,14,19 192:5,19,22 193:5,15 199:6 200:3 208:20 taxation 57:19 62:8 taxes 1:14 4:9 10:16 11:2,9 16:15,16 17:13 17:14 19:23 20:13,17 21:3 21:20 23:4,7 25:5,9,20 26:20,24 53:21 57:12 57:22 77:13 80:7 82:2,6,7 83:14,15,17	84:3,8,13,17 84:20 86:8 87:11 88:2,5,9 88:11,11,12,21 89:15,20 91:3 95:8 96:2,19 97:5,23 98:21 99:2 103:17 103:20 124:11 125:8 126:6,8 129:5 131:3 143:13,19 151:1 154:25 155:8 162:18 163:6,8 163:9,10,13,24 165:13,17,18 166:3 167:13 169:2,10,10,19 169:22 172:1 181:14 182:22 187:1,8,15,16 187:25 192:7 192:11 193:21 taxing 16:22 17:16,22,25 19:22,24 62:16 71:15,19 84:14 85:5,16 128:23 151:7 162:20 166:14 178:20 191:21 192:1 199:5 taxpayer 14:2 30:3 52:14 68:16,20 85:20,21 199:15 202:3 taxpayers 13:19 62:12 69:3 187:4 188:10 191:14 team 62:24 71:25 72:18 technical 122:15 technically 116:9 138:7 179:16	tell 34:20 55:9 58:21 59:5 87:10 128:18 192:23 telling 202:3 tells 59:17 65:4 65:8,9 temporarily 84:9 ten 9:14 10:22 11:19 28:17 42:1 43:3 66:16,23 ten-minute 34:8 99:18 ten-plus 7:24 9:15 tender 37:19 78:21 101:2 158:8,13 161:9 term 87:18 103:13 105:7 106:6 111:17 114:3 116:10,23 187:13 terminology 105:15 131:5 terms 118:9,18 118:22 133:8 137:5 terrified 57:22 test 111:13 testified 35:1 76:16 100:2 141:17 155:19 159:17 171:4 testimony 7:10 12:3 14:3 18:11 22:11 25:14 27:20 34:18 34:19,19 35:13 36:19 37:4,7 37:13 40:5,14 42:12 47:14,15 48:5,7,14,21 50:19,20,21 50:22 51:2
T				
T 1:20 157:16 210:1,1 table 29:17 196:2,3,4,5,8 196:10,10,12 196:13,13 197:1 197:7 tables 61:23 74:15,15 take 11:1 20:1 33:2 34:8 99:18 123:7 125:6 126:3,19 145:15 151:21 154:16 168:13 169:6 taken 16:20 22:23 34:10 81:2 99:20 102:20 114:5 123:10 takes 11:23 163:4 197:22 talk 48:6 49:5 55:12 87:23				

EVIDENTIARY HEARING - Vol. I 11/8/2017

57:24 63:18	75:19,23 76:4	45:22 49:4	68:2 80:9	133:17 161:1
67:9 73:9	76:5 77:18	54:10 58:21	three 19:7 26:15	185:21
76:9,9,10 77:3	78:18 79:6	64:5 67:20	27:4 121:16	told 80:22
77:5,10,24	86:25 90:7	68:3 73:18	172:14,19	top 173:9,23
78:7,15 89:14	92:25 93:23	74:23 76:12	three-year 12:11	190:7,24
91:9 92:10	97:24 98:1	81:7 86:22	152:3	topic 140:12
94:19 95:2	99:13,16 121:3	91:25 97:9	threshold 17:21	topics 112:19
97:1 100:13,18	123:2,21	102:16 108:2	50:25 102:3	total 95:23 96:1
102:13 103:9	124:18 125:2	109:3,11 112:2	169:14	96:2 98:17,19
104:21,23	128:2,5 130:11	112:19 115:16	tie 178:23	148:17 168:12
108:22 109:14	131:7 134:15	115:24 116:12	tied 9:4	168:18 180:1
110:1 114:12,14	135:9 141:13	116:12,14 118:8	till 136:25	180:16 191:17
115:25 118:1,7	145:4,6,25	118:14 119:23	Tim 4:21	totals 178:24
118:25 121:9	149:5,7 150:16	121:7,13,18,22	time 4:14 6:8	track 76:11
124:1,4,8	153:21 155:12	122:15,16	7:17,23 8:1	156:17 165:6
126:22 128:6	155:13 158:15	123:4 126:7,13	9:14,25 12:6	tracker 26:17,17
128:23 129:2	159:10 160:22	126:23 128:6	14:14 37:8	27:3 165:6,11
130:25 140:17	161:7,10 162:11	128:12,16	46:9 48:20	165:21 166:1
141:20 146:12	164:23 165:1	129:13,20	56:19 65:20	166:10,12
156:7,11 157:5	166:21,23	130:4,8,9	75:5,5,8 81:9	trade 83:25
157:6,8,12	167:3 183:16	135:4,23 136:7	97:9 107:23	traditional 125:3
158:3,4	183:19 188:25	136:11,23	120:8 121:14	125:21
159:23 160:4	194:2 202:23	137:14 139:14	121:20 122:1	traditionally
160:7,23 161:4	202:24	139:18,25	128:13,17	20:21
162:24 163:23	203:21,23,25	140:1,9,19,20	130:7 131:14	transactions
164:1,12 165:4	204:3,25	142:15 143:4	136:5 143:22	8:15 163:14
168:5 170:12	theory 188:1	144:5,13,25	144:23 147:17	transcript 1:6
171:23 172:3,9	thereof 210:10	145:9,18 146:11	150:22 154:15	204:18 210:13
172:17,23	they'd 134:4	146:21 148:21	154:18 174:19	transition 39:25
182:5 185:20	197:8 200:20	150:21 152:6	184:13 210:9	40:2,10 44:13
208:3,4,7,9,11	thing 26:18	152:11 153:4,9	210:14	44:24 79:20
208:13,15,17	27:19 67:5	163:22 165:10	times 71:25	80:1,2,10
208:19,22	68:24 82:22	172:16 173:4,5	108:2 120:1	120:17 150:18
tests 120:22	84:3 112:2	179:20 181:9	143:11	transitional
text 117:15	144:21 150:9,11	185:15 194:15	TIMOTHY 2:5	40:23
texts 118:15	186:14	194:25 199:2	Timothy.Luft...	transitioned
thank 4:17,23	things 20:17	202:8,17	2:8	75:8 80:5,12
5:2,6 6:1,17	26:14 58:13	thinking 24:14	title 57:9 156:1	transitioning
15:16,20,21,23	69:9 88:15	129:20	171:16	44:25,25
19:1,3 20:6,8	92:2 103:16,18	thinks 118:19	today 4:5 16:4	57:14 80:13,14
26:5 28:3,4	110:7 116:13	third 104:15	17:2 18:2,24	80:18
34:6,7,13,25	129:16 133:11	110:22 176:9	28:10 37:14	transitions
36:4 37:1 38:7	144:20 155:2	180:9	46:7 64:15	66:25
38:8 46:20	191:16	thoroughly	67:8 77:24	translate 54:2
56:22 60:11	think 17:22	201:13	78:15 82:16	transportation
70:12 72:10,13	25:10 29:17	thought 54:13	90:23 94:23	60:15 203:12
72:23 73:6	37:18 41:7	54:13 65:19	96:16 100:24	treat 109:5

EVIDENTIARY HEARING - Vol. I 11/8/2017

treated 138:15 138:18,21 185:25	197:5	unaware 63:2	unilateral 10:4	196:2,3,4
treating 190:11	Tuesday 174:12	unclear 30:21	unilaterally	202:11
190:19,20	turn 5:16 15:17	uncommon	71:16	uses 17:5 31:25
treatment 27:14	37:1 78:5	81:17	unique 13:15,18	44:9,11 79:12
47:18 49:3	109:19 123:19	underground	29:9 140:2	113:18 116:10
54:14,22	146:15 163:2	178:7 198:23	185:24 186:13	190:21
58:13 69:6	turned 5:21	underneath	186:14	USOA 8:7 16:9
91:6 96:7	123:16	62:7	unit 175:8	18:13,16 47:9
118:20 120:6,9	two 11:7 18:10	underreporting	United 21:13	90:13 117:2,15
121:6 130:18	27:15 34:18	201:9	110:4 112:11	138:25 139:1
132:5 144:4	35:20 40:17	underscores	unpredictable	140:14,20
163:5 190:9,11	44:8 49:17	11:21	9:8,18,23	146:8
190:18 191:3	53:3,8 71:3	understand	unquote 27:14	USOA's 27:11
tree 141:22,25	75:13 76:8	33:6 42:6	unrelated	USOAs 132:2
142:5,8,11	77:8 117:23	54:4 62:23	50:24	usual 81:8
trial 70:9	130:4 144:13	66:6 158:9	untrue 28:19	usually 144:19
tried 166:9	145:23 156:6	185:4,6,20	unusual 8:7,11	166:8
trigger 122:7	156:17 177:11	188:25 191:18	9:6,12 11:2,8	utilities 33:21
trimming 141:22	177:24 180:6	191:19 193:13	16:10,10 19:23	69:4 103:21
141:25 142:6,8	185:21 186:2,6	193:19 197:4	20:25 26:24	105:18 110:11
142:11	twofold 48:15	198:20	32:3 66:20	110:17 111:8
Trip 6:18	type 41:4 58:16	understanding	66:22 140:2	113:20 120:9
true 20:2 23:1	80:18 112:21	39:24 43:9	144:24 162:18	128:14,19
28:25 29:5	113:3 144:20	48:20 50:6	162:19,21,22	132:3 142:4,7
30:6 31:2	175:15 177:1	51:14 75:7	163:21 165:17	149:20 150:4
36:23 48:25	177:23,23	89:22,25	165:18,21	177:15 186:9
49:2 50:1,3,16	185:11,22	95:15 97:13	update 153:9,17	187:21 201:8,9
51:23,25	189:25 195:13	98:11 106:6	170:10	utility 9:6,9
55:23 62:9	195:24 196:7	113:14 114:7,22	updated 21:10	16:21 17:3
65:4,10 68:15	types 110:19	116:10,18	125:9 140:15	20:14 23:22
93:18 100:20	112:24 149:12	117:10,22 121:4	140:18	23:23,25
103:10 106:8	179:25 182:23	141:6 142:16	urge 23:8	28:22 30:11
107:14 113:23	185:22 196:16	162:6 191:15	use 7:7,12 9:13	31:22,24 32:7
117:9 154:22	typical 8:17	191:20 192:9	14:18,20 15:2	33:7,7 34:4
157:7 161:4	typically 52:5	192:14 193:17	15:5 41:3	47:4 50:23
183:1 210:12	73:20 111:22	understating	43:16 52:9,13	79:15 86:8
trued 99:7,10	U	39:17 48:22	61:19,24 64:15	102:2 106:2
trust 202:2	Uh-huh 66:19	88:19	65:7 81:19	112:18 114:24
truth 202:3	91:11 115:9	understood	84:24 105:6	116:4 118:14,22
try 33:6 121:1	139:7 184:24	47:22 128:22	115:10 139:23	129:5 137:24
131:8 165:19	185:19 186:1	unforeseen	151:18 152:10	142:17 143:11
trying 22:12	187:18 196:20	9:24 20:25	152:19 154:3	148:10 149:10
25:24 44:23	196:24 203:6	unfortunately	165:25 166:1	149:13,16
51:13 55:23	ultimately	180:20	169:9 174:7	154:24 160:3
62:10 111:10	103:24 116:20	Uniform 8:5,13	183:4 185:2	181:4 182:20
	119:2 133:8	105:23 113:12	190:2,2 194:7	183:7
		127:20	195:12,22	utility's 16:12

EVIDENTIARY HEARING - Vol. I 11/8/2017

119:3 120:23 148:7 utilize 65:5	view 17:17,18 58:22 112:1,22 163:9 164:2,7 165:11 viewing 163:7 views 102:20 Volume 1:9 voters 193:10	29:22 30:8,12 30:16,19,21 31:9,9,25 32:2,4,8,11,15 32:20 33:1 34:2,5 38:23 39:12,19 42:21 43:5,7,18 44:1 44:12,17,24,24 54:15,23 57:13 58:13 60:17 63:4 64:10 68:8 69:6 72:16 73:2 76:23 79:12 80:22 82:12,14 83:1 83:19,20,24 85:1,24 86:8 94:7,15 95:24 96:7 105:20 106:2 127:25 128:25 130:14 137:18,19,20 143:17 167:10 171:24 172:18 173:6 175:23 175:23,25 176:3 177:14 177:25 178:8 178:15 186:15 187:21 189:21 190:9,11,18,19 191:2 193:17 194:22 195:2 195:8,14 198:22 199:1 199:16,17 201:15 203:15 Water's 130:22 206:5 Waterworks 57:6 way 21:16 23:15 28:15 56:3 62:3,11,11 84:21 87:22	92:8 95:19 105:1 115:7 117:8 136:24 138:12 144:16 152:12 185:4 191:19 197:20 202:1 we'll 46:11 61:5 126:18 202:25 204:6 we're 11:15 24:7 24:18,20 27:20,25 53:13 54:21 55:25 65:14 80:23 82:21 89:12 91:6 92:4 97:2 120:25 123:4 133:17 140:13 144:19 152:1,10 152:17 168:7 169:2 171:1 172:21 181:16 181:16 189:14 203:5 204:24 we've 70:4 75:12 81:24 83:2 97:22 126:1 137:5 141:10 204:23 weekend 204:20 went 68:11 115:1 176:13,15 189:11 200:15 200:23 201:14 202:19,21 weren't 29:5 128:20 Western 27:7 whiz 30:24 Wilde 34:14,17 35:1,5,6,11 45:11 47:1 72:15 73:8 79:23,25	80:12 89:7,11 128:23 206:6 208:3,4 Wilde's 34:23 168:5,9 WILLIAM 1:19 windfall 192:18 Winston 2:11 wish 59:16 wishes 105:21 withdraw 103:5 witness 14:2 25:23 34:12 34:14,16 37:18 38:20 45:8 59:25 60:3,12 75:22 76:6 78:20 85:4,9 85:11 97:16 99:22,25 101:3 126:23 155:16,17 158:23 159:13 159:16 161:9 161:20 162:24 170:13 171:2,3 175:5 179:14 179:18 188:14 199:6 witnesses 6:14 13:4 168:11 Woodsmall 2:10 2:11 5:12,12 26:7,8,9 38:17 38:18 72:24 72:25 75:25 76:4 79:7 206:3 word 36:2 77:11 77:13 106:6 111:11 115:7,8 115:10 157:14 157:15,18,21 157:22 185:24 wording 114:1 140:9 work 7:17 8:1
119:3 120:23 148:7 utilize 65:5	view 17:17,18 58:22 112:1,22 163:9 164:2,7 165:11 viewing 163:7 views 102:20 Volume 1:9 voters 193:10	29:22 30:8,12 30:16,19,21 31:9,9,25 32:2,4,8,11,15 32:20 33:1 34:2,5 38:23 39:12,19 42:21 43:5,7,18 44:1 44:12,17,24,24 54:15,23 57:13 58:13 60:17 63:4 64:10 68:8 69:6 72:16 73:2 76:23 79:12 80:22 82:12,14 83:1 83:19,20,24 85:1,24 86:8 94:7,15 95:24 96:7 105:20 106:2 127:25 128:25 130:14 137:18,19,20 143:17 167:10 171:24 172:18 173:6 175:23 175:23,25 176:3 177:14 177:25 178:8 178:15 186:15 187:21 189:21 190:9,11,18,19 191:2 193:17 194:22 195:2 195:8,14 198:22 199:1 199:16,17 201:15 203:15 Water's 130:22 206:5 Waterworks 57:6 way 21:16 23:15 28:15 56:3 62:3,11,11 84:21 87:22	92:8 95:19 105:1 115:7 117:8 136:24 138:12 144:16 152:12 185:4 191:19 197:20 202:1 we'll 46:11 61:5 126:18 202:25 204:6 we're 11:15 24:7 24:18,20 27:20,25 53:13 54:21 55:25 65:14 80:23 82:21 89:12 91:6 92:4 97:2 120:25 123:4 133:17 140:13 144:19 152:1,10 152:17 168:7 169:2 171:1 172:21 181:16 181:16 189:14 203:5 204:24 we've 70:4 75:12 81:24 83:2 97:22 126:1 137:5 141:10 204:23 weekend 204:20 went 68:11 115:1 176:13,15 189:11 200:15 200:23 201:14 202:19,21 weren't 29:5 128:20 Western 27:7 whiz 30:24 Wilde 34:14,17 35:1,5,6,11 45:11 47:1 72:15 73:8 79:23,25	80:12 89:7,11 128:23 206:6 208:3,4 Wilde's 34:23 168:5,9 WILLIAM 1:19 windfall 192:18 Winston 2:11 wish 59:16 wishes 105:21 withdraw 103:5 witness 14:2 25:23 34:12 34:14,16 37:18 38:20 45:8 59:25 60:3,12 75:22 76:6 78:20 85:4,9 85:11 97:16 99:22,25 101:3 126:23 155:16,17 158:23 159:13 159:16 161:9 161:20 162:24 170:13 171:2,3 175:5 179:14 179:18 188:14 199:6 witnesses 6:14 13:4 168:11 Woodsmall 2:10 2:11 5:12,12 26:7,8,9 38:17 38:18 72:24 72:25 75:25 76:4 79:7 206:3 word 36:2 77:11 77:13 106:6 111:11 115:7,8 115:10 157:14 157:15,18,21 157:22 185:24 wording 114:1 140:9 work 7:17 8:1

EVIDENTIARY HEARING - Vol. I 11/8/2017

47:23 70:21	Y	120:5 129:25	1/60 152:3	29:4 30:4,23
70:25 71:6,7	Y 1:18	129:25 131:1	1:30 123:7	32:24
90:20 139:25	yeah 5:22 41:15	137:6 143:10	10 89:18 131:10	14 22:11 98:20
140:22 156:3	49:13 53:25	145:2 148:5	160:5 161:8,11	98:24 114:15
160:1,2 171:15	54:6 55:14	149:19 151:18	161:16,17 182:6	143:7 172:4
175:7 184:15	56:20 57:17	156:6 162:7,7	197:17,22	173:18 174:8
191:20	64:18 66:10	168:8 180:24	208:18	174:21 209:1
worked 143:10	67:10 68:1	180:25 181:1	10:58 99:17	141 206:21
156:5 168:16	70:4 82:1,5	182:14 184:3	100 33:12 199:1	145 206:21
worker 184:7	82:20 86:12	185:12 189:6,8	206:18	146 206:22
working 184:19	92:18 93:22	189:9 190:15	100,000 33:12	149 206:22
works 64:1 94:5	106:15 108:9	194:25,25	52:25 53:1	15 172:5 173:20
worksheet	126:18 128:18	197:15,19,22	101 206:18	174:22 184:3
167:15,17	129:4,11 151:13	197:23 198:25	208:11,13	206:2 209:3
172:18 173:5	173:6 190:16	199:1,21 200:8	10Ks 110:18	15-year 56:13
179:6	197:3 198:15	201:1,1,5,14	10Qs 110:19	153 206:23
worksheets	201:20	years' 189:15	11 102:16 114:12	158 208:15,17
178:23 195:6	year 10:13 11:11	yep 48:13	114:15 163:6	159 207:2
worried 62:8,9	11:11 14:24	yesterday	167:19,20	16 48:10 77:11
worry 62:6	16:18 26:22	42:20	170:4,20,22	119:21 172:5
186:6	27:23 43:8	you-all 42:3	208:20	174:1,22 175:1
worse 121:23	46:4 51:18		11:10 99:19	175:2 204:11
worth 53:1	52:25 53:3,8	Z	11:47 123:4	209:5
180:25 181:1	56:20 57:8	zero 74:13	12 121:1 144:25	161 207:2
189:15	64:18,18,18	160:21	172:4,22	208:19
wouldn't 56:7,8	65:17 73:16		174:21 175:1,2	162 207:3
68:1 81:16	95:14 96:9,22	0	208:21	165 207:3
82:15,17 95:4	96:23 97:9,10	06 31:14,23 41:11	122 60:2	167 207:4
122:19 125:24	97:11 98:8	67:23	123 206:19	167,000 97:2
143:8 153:4	99:3,8 121:17	08 75:5 131:10	128 206:19	17 197:18,22,23
200:2	125:16 126:6	09 131:10	13 167:12 172:4	17-14 146:23
woven 196:15	135:17 143:1,5		173:13 174:21	17-4 146:19
WR-2017-0285	168:24 179:23	1	208:23	17-month 10:12
36:11	180:23 185:2	1 34:21,23 35:14	130 206:20	170 208:20
wrap 121:1	189:12,24	37:20,24 38:9	135 206:20	171 207:7
written 48:21	200:24 201:12	38:13,14 40:14	137 21:9 67:8	175 207:7
97:22 172:23	201:18,22	50:19 117:25	87:7,10,11	208:22,25
208:22	years 7:24 9:14	124:7 127:2	129:17 141:8,9	209:2,4,6
wrong 17:9	9:15 10:22	136:2 160:19	175:12 203:7	18 29:24 144:25
55:21 136:1,8	11:19 14:19 19:7	163:6 165:4	137.010 59:9,23	165:25 197:14
159:22 174:10	27:15 28:9,17	172:12,13,14,17	60:7	181 207:8
194:21	40:17,19,21	172:17 173:2,5	137.010(4) 60:13	182 117:1,10,21
WU-2017-0351	42:1 43:3,7	173:23,23,24	137.122 14:4	182.3 113:17
1:14 4:11	56:8 66:16,23	204:10 208:2	29:4,18 30:23	183 207:8
	75:13 93:12,13	1-003 173:23	32:24 67:12	186 23:20 24:4
X	106:14,15,16	1-A 172:16	176:7 199:9	24:12 91:2
X 206:1		1/36 152:3	137.340 28:24	105:14,22

EVIDENTIARY HEARING - Vol. I 11/8/2017

132:8 133:24 138:3 19 73:14 77:15 77:16 119:22 157:16 194 207:9 1973 137:25 1976 8:25 137:25 139:2 140:6,13 153:8 1981 106:19 1990s 153:19 1996 9:2 19th 63:23 1st 126:15 136:10	46:2 53:7,16 54:9,11,16 56:13 75:5,16 79:21 80:5,25 81:11,19,25 82:1,13 83:4 88:18,20 128:9,24 142:22 151:9 162:2 178:3 179:5 181:22 182:8,12 186:8 189:4 190:23 191:9 195:14 197:9,18 200:17 201:16 200 2:20 3:2 142:23 143:2 143:12 2003 64:13 2006 65:15 67:15,19 131:10 176:15 198:4 198:10 2007 14:14,22 31:5 32:7 41:2 63:23 66:16 73:10,14,24 75:5 81:12 82:14,19,23 93:8,13 128:8 130:16 142:3 150:21 151:18 169:8 176:13 176:16 184:11 184:22 185:3 185:4,13 189:12 2008 21:11,25 25:16 43:2 54:10 81:12 82:14 130:23 142:3 169:9 2010 93:13 2012 189:16 196:19 2013 93:13	183:24 184:11 196:20 2015 26:16 125:16 154:10 154:11 2016 9:25 10:19 50:4 57:8 65:25 70:21 98:19 125:13 165:5 169:4,17 179:8,20,23 180:1,7 2017 1:8 4:5 7:4 10:13 14:24 25:4,5 27:23 28:14 29:13 39:12 42:20 44:19 46:5 60:7 65:16 66:16 74:9 80:7,19,22 82:20 93:13 96:12,22 97:6 97:12 98:13 98:24 124:24 125:24 126:4 126:10 128:21 128:25 129:2 131:1 144:10,12 151:24 165:25 167:13 168:6,11 169:16,19 172:24 173:9 173:17 174:13 191:11 200:7 208:24 209:1 209:3,5 2018 7:4 10:13 25:6 96:23 97:3 124:24 125:25 126:6 126:10,15,17 127:4 135:8,13 135:19 136:2 136:22 144:10 151:25 152:2 167:14 168:6	168:18 169:16 169:19 191:14 203 207:9 20th 172:24 21 117:24 160:12 22 35:21 36:2 117:24 2230 2:19 23 21:20 22:4 25:20 30:15 35:21 36:7,10 37:23 39:18 43:19 46:1 48:11 67:2 74:24 80:13 80:15 88:17 130:21 144:3 198:8 23-odd 61:1 24 21:21 25:20 39:18 45:19 46:1 87:17 157:14,20 182:23 240-50.030 137:18 25 106:14,15,15 26 206:3 28 173:9 206:4 208:24 2848 180:15 28th 70:7 2nd 67:15,19 176:15 198:4 198:10	167:12 169:11 170:12 172:12 172:13,17 208:5,6 3,674,215 180:2 30 96:10,19 106:16 143:10 194:20 197:14 199:25 209:1 30th 95:14 173:17 174:13 200:7 31 209:3 312 2:3 314 996-2279 2:7 31st 97:11 32 176:7 180:14 325 58:11 326 58:10 33 176:8 180:9 35 206:6 360 3:2 37 28:8 38 206:7 208:3 208:4
<hr/> 2 <hr/> 2 8:23 12:22 34:21,24 37:3 37:20,24 38:9 38:13,14 50:20 117:25 172:12,13,17 193:4 199:9 208:4 2,982,000 169:6 2:50 205:4 20 33:14 56:8 77:17 93:12 129:25 148:5 149:19 162:7 176:12 180:24 183:5 185:12 189:6,9,23 190:14 197:21 199:22 201:1 201:14 206:3 20-year 7:13,15 15:2,5 17:4 29:2,13 32:1 32:22 33:11 34:1 39:5,9,13 39:20 40:1 43:4,9,16 44:5 44:7,13 45:21	<hr/> 2 <hr/> 2 8:23 12:22 34:21,24 37:3 37:20,24 38:9 38:13,14 50:20 117:25 172:12,13,17 193:4 199:9 208:4 2,982,000 169:6 2:50 205:4 20 33:14 56:8 77:17 93:12 129:25 148:5 149:19 162:7 176:12 180:24 183:5 185:12 189:6,9,23 190:14 197:21 199:22 201:1 201:14 206:3 20-year 7:13,15 15:2,5 17:4 29:2,13 32:1 32:22 33:11 34:1 39:5,9,13 39:20 40:1 43:4,9,16 44:5 44:7,13 45:21	<hr/> 2 <hr/> 2 8:23 12:22 34:21,24 37:3 37:20,24 38:9 38:13,14 50:20 117:25 172:12,13,17 193:4 199:9 208:4 2,982,000 169:6 2:50 205:4 20 33:14 56:8 77:17 93:12 129:25 148:5 149:19 162:7 176:12 180:24 183:5 185:12 189:6,9,23 190:14 197:21 199:22 201:1 201:14 206:3 20-year 7:13,15 15:2,5 17:4 29:2,13 32:1 32:22 33:11 34:1 39:5,9,13 39:20 40:1 43:4,9,16 44:5 44:7,13 45:21	<hr/> 2 <hr/> 2 8:23 12:22 34:21,24 37:3 37:20,24 38:9 38:13,14 50:20 117:25 172:12,13,17 193:4 199:9 208:4 2,982,000 169:6 2:50 205:4 20 33:14 56:8 77:17 93:12 129:25 148:5 149:19 162:7 176:12 180:24 183:5 185:12 189:6,9,23 190:14 197:21 199:22 201:1 201:14 206:3 20-year 7:13,15 15:2,5 17:4 29:2,13 32:1 32:22 33:11 34:1 39:5,9,13 39:20 40:1 43:4,9,16 44:5 44:7,13 45:21	<hr/> 2 <hr/> 2 8:23 12:22 34:21,24 37:3 37:20,24 38:9 38:13,14 50:20 117:25 172:12,13,17 193:4 199:9 208:4 2,982,000 169:6 2:50 205:4 20 33:14 56:8 77:17 93:12 129:25 148:5 149:19 162:7 176:12 180:24 183:5 185:12 189:6,9,23 190:14 197:21 199:22 201:1 201:14 206:3 20-year 7:13,15 15:2,5 17:4 29:2,13 32:1 32:22 33:11 34:1 39:5,9,13 39:20 40:1 43:4,9,16 44:5 44:7,13 45:21
<hr/> 3 <hr/> 3 13:5 35:20 40:11 42:10,10 42:11,16 45:15 46:10,12,12,13 46:15,17 48:10 74:23,23 82:24,25 110:21,23 157:21 160:3 160:12 165:4	<hr/> 3 <hr/> 3 13:5 35:20 40:11 42:10,10 42:11,16 45:15 46:10,12,12,13 46:15,17 48:10 74:23,23 82:24,25 110:21,23 157:21 160:3 160:12 165:4	<hr/> 3 <hr/> 3 13:5 35:20 40:11 42:10,10 42:11,16 45:15 46:10,12,12,13 46:15,17 48:10 74:23,23 82:24,25 110:21,23 157:21 160:3 160:12 165:4	<hr/> 3 <hr/> 3 13:5 35:20 40:11 42:10,10 42:11,16 45:15 46:10,12,12,13 46:15,17 48:10 74:23,23 82:24,25 110:21,23 157:21 160:3 160:12 165:4	<hr/> 3 <hr/> 3 13:5 35:20 40:11 42:10,10 42:11,16 45:15 46:10,12,12,13 46:15,17 48:10 74:23,23 82:24,25 110:21,23 157:21 160:3 160:12 165:4
<hr/> 4 <hr/> 4 13:5 63:17 69:13 73:10 76:12,14 77:3 78:21,23 79:3 79:4 110:23 114:12 117:24 131:25 137:18 157:20 172:13 172:17 191:12 193:3 208:7 4,841,271 168:10 4.4 98:13,16,22 4.8 7:4 40,000 180:19 184:17 185:17 400,000 17:20 96:22 415 2:15 433 139:5	<hr/> 4 <hr/> 4 13:5 63:17 69:13 73:10 76:12,14 77:3 78:21,23 79:3 79:4 110:23 114:12 117:24 131:25 137:18 157:20 172:13 172:17 191:12 193:3 208:7 4,841,271 168:10 4.4 98:13,16,22 4.8 7:4 40,000 180:19 184:17 185:17 400,000 17:20 96:22 415 2:15 433 139:5	<hr/> 4 <hr/> 4 13:5 63:17 69:13 73:10 76:12,14 77:3 78:21,23 79:3 79:4 110:23 114:12 117:24 131:25 137:18 157:20 172:13 172:17 191:12 193:3 208:7 4,841,271 168:10 4.4 98:13,16,22 4.8 7:4 40,000 180:19 184:17 185:17 400,000 17:20 96:22 415 2:15 433 139:5	<hr/> 4 <hr/> 4 13:5 63:17 69:13 73:10 76:12,14 77:3 78:21,23 79:3 79:4 110:23 114:12 117:24 131:25 137:18 157:20 172:13 172:17 191:12 193:3 208:7 4,841,271 168:10 4.4 98:13,16,22 4.8 7:4 40,000 180:19 184:17 185:17 400,000 17:20 96:22 415 2:15 433 139:5	<hr/> 4 <hr/> 4 13:5 63:17 69:13 73:10 76:12,14 77:3 78:21,23 79:3 79:4 110:23 114:12 117:24 131:25 137:18 157:20 172:13 172:17 191:12 193:3 208:7 4,841,271 168:10 4.4 98:13,16,22 4.8 7:4 40,000 180:19 184:17 185:17 400,000 17:20 96:22 415 2:15 433 139:5

EVIDENTIARY HEARING - Vol. I 11/8/2017

434 139:5 45 206:7 4520 111:2 456 2:3 46 206:8 208:6 47.8 169:7,23 <hr/> <p align="center">5</p> <hr/> 5 8:23 16:11 17:21 50:4,16 67:13 76:12,14 78:6,21,24 79:3,4 91:16 117:25 119:10 119:21 157:14 157:16 164:13 164:20 165:4 169:14 208:8 50 198:24 199:1 50-year 7:16 17:16 32:12 92:18 198:13 198:20 199:3 500,000 137:20 51 206:8 55 197:14 57 206:9 573)635-7166 2:4 573)751-3234 3:3 573)751-4857 2:21 573)797-0005 2:12 5s 108:4 <hr/> <p align="center">6</p> <hr/> 6 14:3 77:11 100:14 101:2,8 101:12,13 114:12,14 119:6 132:1 156:18 160:14,14 167:12 169:8 206:2 208:10	209:5 6.5 7:5 63105 2:16 63141 2:7 650 2:20 65101 2:12 65102 3:3 65102-0456 2:4 65102-2230 2:20 6th 174:3 <hr/> <p align="center">7</p> <hr/> 7 8:22 36:6 37:22 77:14 100:14 101:2,8 101:12,13,17 131:23 156:19 157:17,18 162:7 176:11 189:23 208:12 7-year 39:5 162:1 7.5 10:11,17 168:12 70 197:14 206:9 72 206:10 727 2:6 73 206:10 76 206:12 79 206:12 208:7,9 7th 95:14 <hr/> <p align="center">8</p> <hr/> 8 1:8 37:23 102:16,16 124:8 132:1 156:20,21,22 156:23 158:4 158:5,13,15,19 158:20 163:2 208:14 8:30 4:6 8:32 4:3 807 2:11	838 1:24 85,700 53:5 86 206:13 87 206:13 89 179:10,11 180:8,8,13 197:14 8th 4:5 <hr/> <p align="center">9</p> <hr/> 9 123:25 124:7 156:20,21,22 156:23 158:4 158:5,13,16,19 158:20 160:19 170:12 208:16 9,300 53:13 9.6 10:18 9.7 53:24 9:30 34:9 90 57:15,16 90-something 197:19 93 206:14,14 945 195:19 946 195:19,20 95 33:13 53:12 95,000 53:9 97 206:15 98 206:15 980 110:6,8 980-10 111:2		
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