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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
March 6, 2018
Jefferson City, Missouri
Volume 16

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

KIM S. BURTON, Presiding,
REGULATORY LAW JUDGE.

DANIEL Y HALL, Chairman
WILLIAM KENNEY,
MAIDA J. COLEMAN,
RYAN A. SILVEY
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
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1 PROCEEDINGS

2 (WHEREUPON, the evidentiary hearing
3 began at 8:35 a.m.)

4 JUDGE BURTON: Let's go ahead and go
5 on the record for the second day of the evidentiary
6 hearing. Today is March 6, 2018. The time is
7 approximately 8:35 in the morning.

8 And before we begin with testimony
9 continuing on Staff's witnesses, I just wanted to
10 discuss some procedural matters. And I believe
11 that the parties have indicated that there might be
12 an adjustment to the schedule on some of the issues
13 that we had set for today and later this week.

14 MR. WESTEN: That's correct, Judge.
15 The parties have reached an agreement and have
16 currently circulating a Stipulation & Agreement on
17 allocations, which is scheduled for this afternoon,
18 as well as sewer rate design issues which are
19 scheduled for Thursday, and that same Stipulation &
20 Agreement also resolves one of the subissues within
21 rate design, the water rate design issue.

22 The parties who are planning on
23 signing the agreement have signed. There are some
24 parties who we're anticipating to state that they
25 are not planning on signing but not objecting.

1 We're still making sure we have those affirmative
2 confirmations from them. Our goal today,
3 hopefully, is to have something filed by noon at
4 the earliest if we can, certainly something filed
5 by the end of the day if possible.

6 JUDGE BURTON: So the Commission will
7 have an opportunity to review those later today?

8 MR. WESTEN: That is our hope and
9 goal, yes.

10 THE COURT: With that being said, I
11 know we did originally have lead service line
12 replacement and allocations set for today. So we
13 would just be completing the lead service line
14 testimony today?

15 MR. WESTEN: That's correct. And if
16 we finish early today, I think the parties would
17 appreciate that time to keep working on trying to
18 resolve the issue brought up yesterday by the
19 Chairman to see if we can continue discussing that.

20 JUDGE BURTON: Okay. That sounds
21 like a good plan. That being said, let's go ahead
22 and begin with our first witness of the day.

23 CHAIRMAN HALL: What is the rate
24 design issue that is also possibly subject to this
25 stipulation?

1 MR. WESTEN: It would be the
2 bifurcation of Rate A, which had been proposed by
3 the company to be split into residential and
4 non-residential. The resolution would be that that
5 remains simply Rate A, those rates.

6 CHAIRMAN HALL: Thank you.

7 JUDGE BURTON: Would you please raise
8 your right hand.

9 (Witness sworn.)

10 JUDGE BURTON: You may be seated.

11 AMANDA McMELLEN testified as follows:

12 DIRECT EXAMINATION BY MS. ASLIN:

13 Q. Would you please state your name.

14 A. It's Amanda McMellen,
15 M-c-M-e-l-l-e-n.

16 Q. And how are you employed?

17 A. I'm employed by the Staff of the
18 Missouri Public Service Commission as a Utility
19 Regulatory Auditor.

20 Q. And did you prepare or cause to be
21 prepared rebuttal testimony marked as Exhibit 107
22 and surrebuttal testimony marked as Exhibit 124?

23 A. Yes, I did.

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

1 A. No, I do not.

2 **Q. And are the answers contained in that**
3 **testimony true and correct to the best of your**
4 **knowledge and belief?**

5 A. Yes, they are.

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

8 A. Yes.

9 MS. ASLIN: Judge, I move for the
10 admission of Exhibits 107 and 124.

11 JUDGE BURTON: 107 is the rebuttal
12 testimony of Ms. McMellen, and Exhibit 124 is the
13 surrebuttal testimony of Ms. McMellen.

14 MS. ASLIN: Correct.

15 JUDGE BURTON: Are there any
16 objections?

17 MR. SMITH: No objection.

18 JUDGE BURTON: Seeing no objections,
19 those exhibits are admitted.

20 (STAFF EXHIBITS 107 AND 124 WERE
21 MARKED AND RECEIVED INTO EVIDENCE.)

22 MS. ASLIN: I tender the witness for
23 cross.

24 JUDGE BURTON: And MIEC I believe is
25 first.

1 MR. MILLS: No questions.

2 THE COURT: Division of Energy?

3 MR. POSTON: No questions.

4 JUDGE BURTON: Consumers Counsel?

5 Office of the Public Counsel?

6 MR. SMITH: Was the company -- I
7 thought we had agreed to -- I think the company is
8 going to go first.

9 JUDGE BURTON: I just had for Staff
10 witnesses this list, but if we're going in the
11 order of support?

12 MR. SMITH: Yes.

13 MR. COOPER: Yeah. I'll agree with
14 Mr. Smith. We had discussed that before. So I'll
15 be going before Mr. Smith on this.

16 MR. WESTEN: Staff has no objection
17 to that.

18 CROSS-EXAMINATION BY MR. COOPER:

19 Q. Ms. McMellen, I want to talk first
20 about your recommendation as to the costs that have
21 been deferred in accordance with the Accounting
22 Authority Order granted pursuant to WU-2017-0296.

23 A. Okay.

24 Q. And if I understand your testimony,
25 and I think you reference this in your surrebuttal

1 and there you reference back to your rebuttal. As
2 I read it, what you recommend in regard to those
3 costs is that they be amortized over a ten-year
4 period beginning with the effective date of the
5 Report and Order in this case and the unamortized
6 balance included in rate base; is that correct?

7 A. Yes, that's correct.

8 Q. Okay. And ultimately that would be,
9 what, the costs that have been deferred through
10 December 31 of 2017?

11 A. Once I can verify from June through
12 December.

13 Q. Now, the other aspect, I think, of
14 your recommendation has to do with what to do on a
15 going-forward basis; is that correct?

16 A. Correct.

17 Q. And on a going-forward basis, as I
18 understand your testimony, you would recommend that
19 these lead service line replacement costs for the
20 customer-owned lines continue to be booked to
21 Account 186; is that correct?

22 A. Yes, that's correct.

23 Q. And I assume booked until the next
24 rate case; is that right?

25 A. Yes, that's correct.

1 **Q. Do you make any recommendation as to**
2 **what should happen in that next rate case in terms**
3 **of recovery of those costs that would be deferred?**

4 A. My recommendation is continue as the
5 way we're doing it right now and amortize over ten
6 years and include the unamortized balance in rate
7 base.

8 **Q. And will we know what the result is**
9 **until we get to that next rate case ultimately if**
10 **we book them to 186?**

11 A. Not 100 percent, but that would be my
12 recommendation going forward.

13 **Q. And I assume Staff's recommendation**
14 **in this case?**

15 A. Correct.

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

18 JUDGE BURTON: Thank you. Did the
19 public water supply districts have any questions?

20 MR. DORITY: We have no questions,
21 your Honor, and if I may be excused for the
22 remainder of the morning, and Mr. Steinmeier,
23 counsel for the City of Joseph, requests to be
24 excused as well. Thank you.

25 JUDGE BURTON: The request is

1 granted, and I guess we will see you tomorrow.

2 Mr. Smith, I believe you are up.

3 MR. SMITH: Thank you.

4 CROSS-EXAMINATION BY MR. SMITH:

5 Q. As I understand it, the unamortized
6 balance would be included in rate base?

7 A. Correct.

8 Q. Does that mean the rate of return
9 would be the weighted average cost of capital or
10 would it be the short-term debt rate, in your
11 opinion?

12 A. For the total unamortized balance, it
13 would be the rate of return.

14 Q. Okay. So Staff is recommending a
15 weighted average cost, full weighted average cost
16 of capital?

17 A. On the unamortized balance, but not
18 in the actual inclusion of the balance that's in
19 the regulatory asset account. That's the carrying
20 costs that we -- that's the short-term debt.

21 Q. What account would Staff put that
22 into?

23 A. It would continue in 186.

24 Q. So it would continue in 186, but it
25 would be treated as rate base, in your opinion?

1 A. Correct.

2 Q. Okay. And what would be the, I
3 guess, depreciation period that you recommend?

4 A. It would actually be an amortization
5 period of ten years.

6 Q. What about for the unamortized
7 amount?

8 A. It's still the ten-year amortization
9 going forward.

10 Q. Why did you develop ten years?

11 A. It's a shorter recovery period
12 than -- because these are extraordinary ex-- costs
13 that would normally be expensed, but with the AAO
14 they're considered extraordinary costs, and it's a
15 shorter recovery period than if it was booked in
16 plant.

17 Q. Now, if they're normally expensed,
18 there's no return on?

19 A. Correct. That would be a return of.

20 Q. So what is the useful life of a
21 service line?

22 A. Based on the depreciation schedule
23 that I've seen, it would be 65 years.

24 Q. So Staff -- you realize the company
25 is not advocating for a ten-year accelerated

1 **recovery, correct?**

2 A. Correct. But they're advocating they
3 want to book it in plant and continue over 65
4 years. We don't want it in plant. We'd rather
5 have it as a regulatory asset and amortized over
6 ten.

7 Q. **Well, I'm confused because I thought**
8 **you just said that you did want it in plant for the**
9 **unamortized balance.**

10 A. No. That's incorrect. We want it in
11 rate base, not in plant.

12 Q. **All right. So as I understand**
13 **Staff's proposal, it would be a short-term debt**
14 **rate applied, I guess, up until the next rate case?**

15 A. If it stays in 186, correct, as
16 carrying costs.

17 Q. **And at that point all the unamortized**
18 **portion of that balance would be put into a**
19 **separate account and there would be a weighted**
20 **average cost of capital on that unamortized amount?**

21 A. As it's included in rate base.

22 MR. SMITH: Okay. No further
23 questions. Thank you.

24 JUDGE BURTON: Questions from the
25 Bench?

1 QUESTIONS BY CHAIRMAN HALL:

2 Q. Good morning.

3 A. Good morning.

4 Q. How much is currently in Account 186
5 regarding the customer-owned lead service line
6 replacement?

7 A. Through what time period? Through
8 December?

9 Q. Tell me.

10 A. We verified through June of 2017 at a
11 little over a million, almost 1.1 million.

12 Q. So through June 30 --

13 A. Through June 30th, uh-huh.

14 Q. -- 2017 is how much?

15 A. It's in my testimony. One zero seven
16 one --

17 Q. A little over a million?

18 A. Yeah.

19 Q. And then do you have a different
20 number for a different date?

21 A. We have to verify it, but the company
22 gave us numbers through December 31st, 2017, and
23 that's what they referenced yesterday, the
24 1.4 million. But we still need to verify that
25 number.

1 Q. And Staff's proposal is that that
2 1.4 million be amortized over ten years?

3 A. Correct.

4 Q. With carrying costs?

5 A. Yes.

6 Q. With short-term carrying costs?

7 A. Correct.

8 Q. Which is a little under 1 percent?

9 A. Correct.

10 Q. Okay. So that means that the
11 company, under Staff's proposal, would recover
12 roughly a tenth of that 1.4 million each year over
13 the next ten years?

14 A. Correct.

15 Q. That amount would not be in rate
16 base?

17 A. We're recommending that the
18 unamortized balance be included in rate base.

19 Q. I guess I don't understand. Maybe
20 it's just a terminology, because would the company
21 be getting a return on that amount in rate base?

22 A. Correct.

23 Q. So they're getting carrying costs and
24 a return --

25 A. Correct.

1 Q. -- under your proposal?

2 A. Yes.

3 Q. What is the rationale for the company
4 getting a return on that amount, the unamortized
5 amount?

6 A. Typically with AAOs where the
7 Commission and the Staff agree it's a project the
8 company needs to do, we typically include that in
9 rate base and give them the carrying costs and the
10 return on.

11 Q. I thought Staff was taking the
12 position that because the company did not own the
13 lines, that the costs should not be included in
14 plant in service?

15 A. Not in plant in service, but included
16 in rate base.

17 Q. Okay. What's the difference?

18 A. It's just the accounting treatment.
19 The plant in service is going to be a longer time
20 period.

21 Q. So the dollars -- so we're just
22 arguing about accounting treatment. The actual
23 dollars, it's irrelevant?

24 A. No. We are actually putting more in
25 the case if you -- because we're amortizing over

1 ten years.

2 **Q. I don't understand the difference**
3 **between plant in service and rate base. Maybe you**
4 **can help me there.**

5 A. Plant in service is, it's an asset
6 that is property that is owned either by person or
7 company that provides a future benefit to the
8 owner; where the regulatory asset is a deferral
9 that changes or the company cannot immediately
10 charge extraordinary expense.

11 **Q. So if the -- so if the Commission**
12 **were to determine that it was inappropriate for the**
13 **company to receive a return on the investment, just**
14 **a return of the investment, what would -- what**
15 **would the Commission need to do concerning this**
16 **1.4 million?**

17 A. Our recommendation would be to leave
18 it in --

19 **Q. No.**

20 A. Okay.

21 **Q. I'm asking you to help me if the**
22 **Commission were to determine that they should not**
23 **get a return on that investment, just a return of**
24 **that investment.**

25 A. Okay. Then you would leave it in

1 186, the deferral account, amortize it over ten
2 years, and not include it in rate base.

3 Q. Okay.

4 A. The deferral balance, unamortized
5 balance.

6 Q. Along with the carrying costs?

7 A. Correct.

8 Q. Okay. So then going forward, it is
9 Staff's recommendation that these expenses get
10 continued -- they are booked in 186 going forward?

11 A. Correct.

12 Q. With carrying costs?

13 A. Correct.

14 Q. And then at the next rate case, the
15 Commission would determine whether to take those
16 amounts from 186 and put them into rates?

17 A. Correct.

18 Q. So what is -- okay. So shifting
19 gears now.

20 A. Okay.

21 Q. What is the monetary difference
22 between Staff's position and the company's position
23 regarding the 1.4 million in 186?

24 A. If you use Staff's recommendation to
25 leave it in 186 and amortize it over ten years, it

1 would be an amortization, an increase of about
2 260,000.

3 Q. And that -- does that include --
4 okay. And so then what is the difference between
5 Staff's position and the proposal that I'm laying
6 out of not putting a -- giving a return on that
7 investment, simply a return of that investment?

8 A. It would probably be about half,
9 about 130,000, if you do just the return of and do
10 the amortization, not the return on, and include it
11 in rate base.

12 Q. Would there be -- if the Commission
13 were to determine that this approach is the
14 appropriate one, would there be some argument that
15 perhaps it should be amortized over five years as
16 opposed to ten since it is essentially an interest-
17 free loan and -- well, it's not interest-free
18 because there's carrying costs. But is there an
19 argument that we should speed up the recovery of
20 that investment?

21 A. There could be an argument.
22 Typically in my experience we do three to five
23 years on AAOs.

24 Q. I'm sorry. You do what?

25 A. We typically do three to five years

1 on AAOs in the past.

2 **Q. Why did you propose ten here?**

3 A. Because it's a bigger project than
4 most AAOs are, and it's such an extraordinary
5 project in nature that we decided to defer it for a
6 longer period of time.

7 CHAIRMAN HALL: Okay. I have no
8 further questions. Thank you.

9 QUESTIONS BY JUDGE BURTON:

10 **Q. Could you describe what Account 186**
11 **is?**

12 A. It's deferred debit, coming from a
13 regulatory asset that's been approved by the
14 Commission for an AAO.

15 **Q. Okay. So if the Commission approves**
16 **the program continuing in the future, would that**
17 **still be considered an AAO?**

18 A. I believe it would be.

19 **Q. Would it be -- is there another**
20 **terminology, like a tracker, or is it --**

21 A. I don't -- tracker's a little
22 different, but I would still believe it would be a
23 deferred debit because there's a set time frame,
24 and this is something the company's never done
25 before because they're lead lines and possibility

1 of them not doing it ever again. So to us it's
2 still extraordinary in nature and still should stay
3 in the 186 account.

4 **Q. Are there any other accounts where**
5 **you could reasonably see these amounts going**
6 **forward being placed?**

7 A. Not that I'm aware of.

8 **Q. Now, is there a set amount or can you**
9 **estimate or are we certain of any amount on a**
10 **going-forward basis for a calendar year, let's say?**

11 A. Well, based on the company, we have
12 estimates from the company, but as far as a
13 measurable amount at this time, no.

14 **Q. And has there been any discussion**
15 **from Staff at least to say we believe it should**
16 **only be this amount?**

17 A. Not at this time.

18 **Q. When would that happen?**

19 A. We would track it through December
20 for the current, and then we would look at it going
21 forward in the next rate case.

22 **Q. Okay. So at that point, if the**
23 **company came back and they were continuing this**
24 **program and the costs were \$10 million one year,**
25 **\$2 million another year, the Commission would**

1 consider that those are reasonable costs at that
2 point?

3 A. Correct.

4 JUDGE BURTON: Thank you.

5 FURTHER QUESTIONS BY CHAIRMAN HALL:

6 Q. I have another question. Is there an
7 argument that there should be a different cost of
8 debt associated with these amounts? In the AAO
9 order we, I think, put short-term debt as the
10 carrying cost. Is there an argument that if this
11 is going to be a ten-year-long program with this
12 amount of money at stake, that the Commission might
13 consider long-term debt or some other debt amount?

14 A. That is not part of our proposal.

15 Q. I know it's not part of your
16 proposal. I'm asking you to speculate on a concept
17 that I'm raising right here, which is, is there an
18 argument that there should be a different cost of
19 debt?

20 A. Not at this time.

21 Q. Why?

22 A. I actually haven't considered that.

23 CHAIRMAN HALL: Okay. Thank you.

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. I have a question now. Good morning.

1 A. Good morning.

2 Q. I understand the reasoning of not
3 putting it in plant in service in Staff's -- in
4 Staff's proposal. What is -- what would be the
5 difference in the monetary, overall monetary return
6 versus company's proposal and Staff's proposal just
7 for that 1.1 million?

8 A. Well, I did my calculation based on
9 the 1.4 million.

10 Q. 1.4 million.

11 A. Yeah. If we include it, if Staff's
12 recommendation is included in rate base to get the
13 amortization, my estimate is about 260,000 for this
14 project.

15 Q. 260,000 --

16 A. Recovery each year.

17 Q. -- recovery each year?

18 A. Yeah. And my estimate for the
19 company is about 148,000.

20 Q. For how many --

21 A. Recovery, but their recovery is over
22 65 years.

23 Q. Okay.

24 A. I mean, there will still be
25 depreciation or amortization involved.

1 Q. But the recovery time period. Okay.

2 Thank you.

3 A. You're welcome.

4 JUDGE BURTON: Recross?

5 MR. COOPER: Yes, your Honor.

6 RE-CROSS-EXAMINATION BY MR. COOPER:

7 Q. You were discussing with the Chairman
8 sort of the difference between the plant in service
9 and just plain rate base treatment. Would you
10 agree there are items other than just plant in
11 service that are normally typically included in
12 rate base?

13 A. Correct, there are.

14 Q. And examples of those would be, what,
15 materials and supplies?

16 A. Correct.

17 Q. Cash working capital. Any others
18 that come to mind?

19 A. Correct. Prepaid pension assets.

20 Q. Sometimes these deferral amounts on
21 AAOs --

22 A. Correct.

23 Q. -- as well, right?

24 A. Correct.

25 Q. Or the unamortized balances of AAOs?

1 A. Correct.

2 Q. You talked about a little bit there
3 near the end short-term debt rate. Would you agree
4 that a short-term debt rate generally refers to
5 loan periods of a year or less?

6 A. Correct.

7 Q. And in -- let's talk in terms of
8 construction. Ultimately is that as a typical
9 matter taken out by permanent financing at some
10 point or a combination of financing and equity?

11 A. Yes, I believe so.

12 MR. COOPER: That's all the questions
13 I have.

14 RE-CROSS-EXAMINATION BY MR. SMITH:

15 Q. I think I just wanted to clarify
16 something you and the Commission or you and the
17 Chairman had talked about. So does Staff believe
18 the company should not be allowed to earn a return
19 on investments they do not own?

20 A. Typically that would be our proposal,
21 but this is -- since it was granted the AAO, then
22 they should return -- get return on that
23 investment, those costs, but it shouldn't be booked
24 to plant.

25 Q. Okay. So the standard practice is

1 not to allow a return on investments the company
2 doesn't own?

3 A. Typically, yes.

4 MR. SMITH: Okay. That's all the
5 questions I have. Thanks.

6 JUDGE BURTON: Redirect?

7 REDIRECT EXAMINATION BY MS. ASLIN:

8 Q. Ms. McMellen, you were asked some
9 questions about why Staff is recommending a
10 ten-year amortization period instead of the
11 65 years the company is recommending. Could you
12 explain why we've done that?

13 A. Just with deferral period, we want to
14 give them a longer period of time. It's a -- when
15 they say it's a ten-year program, and we want to
16 amortize that for the length of the program over a
17 longer recovery period than we normally would.

18 Q. But why the ten years as opposed to
19 the 65 that the company is --

20 A. Because we still feel it's not a true
21 asset, that it should be amortized and not
22 depreciated.

23 Q. Okay. And under Staff's
24 recommendation, would the company accrue carrying
25 costs and receive a return on rate base

1 **simultaneously?**

2 A. No.

3 Q. **So would they accrue the carrying**
4 **costs first?**

5 A. Correct.

6 Q. **And once the unamortized balance is**
7 **included in rate base, would accrual of carrying**
8 **costs stop?**

9 A. Yes, they would.

10 Q. **And Judge Burton had asked you about**
11 **understanding how much the company could be**
12 **spending each year on this project. The annual**
13 **reports that Staff has recommended, those would**
14 **provide some of that information, correct?**

15 A. Yes, they would.

16 Q. **And would Staff review those and**
17 **investigate further if it felt that there were**
18 **imprudent costs included in that?**

19 A. Yes, we would.

20 Q. **And one last question. If these**
21 **costs were booked in Account 345 as plant in**
22 **service, how would they be treated differently?**

23 A. Our proposal would be do a subaccount
24 at a different depreciation rate.

25 MS. ASLIN: Thank you.

1 JUDGE BURTON: Thank you. You're
2 excused.

3 I believe the next witness we have
4 today is DE's Hyman. Raise your right hand.

5 (Witness sworn.)

6 JUDGE BURTON: You may be seated.

7 MARTIN HYMAN testified as follows:

8 DIRECT EXAMINATION BY MR. POSTON:

9 Q. Would you please state your name for
10 the court reporter.

11 A. Martin Hyman, H-y-m-a-n.

12 Q. Are you the same Martin Hyman that
13 caused to be prepared and filed testimony that's
14 been premarked as Exhibit 600, 601, 602 and 603?

15 A. I am.

16 Q. And do you have any changes or
17 corrections to that testimony?

18 A. I do not.

19 Q. If I were to ask you the questions
20 that appear in your testimony today, would your
21 answers be the same?

22 A. Yes.

23 MR. POSTON: Your Honor, I move for
24 the admission of 600, 601, 602 and 603.

25 JUDGE BURTON: Exhibit 600, which is

1 the direct testimony of Martin Hyman on rates, 601,
2 the rebuttal testimony of Martin Hyman on revenue,
3 Exhibit 602, rebuttal testimony of Martin Hyman on
4 rates, and 603, surrebuttal testimony of Martin
5 Hyman, have been offered. Are there any
6 objections?

7 (No response.)

8 JUDGE BURTON: Seeing none, they are
9 received.

10 (DE EXHIBITS 600, 601, 602 AND 603
11 WERE MARKED AND RECEIVED INTO EVIDENCE.)

12 MR. POSTON: Tender the witness for
13 cross. Thank you.

14 JUDGE BURTON: Did we want to start
15 with Staff on this? I have down on the schedule
16 that we would be going with OPC first.

17 MR. WESTEN: Staff has no cross for
18 Mr. Hyman.

19 MR. COOPER: Nor does the company.

20 MR. MILLS: I have no questions.

21 JUDGE BURTON: OPC.

22 MR. SMITH: Thanks.

23 CROSS-EXAMINATION BY MR. SMITH:

24 **Q. So, Mr. Hyman, as I understand it,**
25 **you may be one of the few parties that think there**

1 **could be some value in doing some sort of**
2 **collaboration or study?**

3 A. Under certain conditions, yes.

4 **Q. And one of the things, as I**
5 **understand it, you think could be valuable to study**
6 **would be sort of a prioritization to make sure that**
7 **the company's approach is really the right**
8 **approach; is that fair?**

9 A. Sort of. I think it's more looking
10 at such things as how you do it in terms of
11 financing and who pays, prioritization of at-risk
12 populations, those sorts of things.

13 **Q. So in terms of prioritization of**
14 **at-risk populations, would you want to look into**
15 **the idea of whether low-income should be**
16 **prioritized?**

17 A. I think that could be part of it,
18 along with, you know, if you look at which
19 customers are in most need of having the lines
20 replaced at cost to the company and ratepayers and
21 shareholders, more so along the lines of, you know,
22 the low-income customers will get priority for that
23 funding. And then the rest, you could look at
24 other scenarios, such as an on-bill setup if
25 possible.

1 **Q. What about beyond low-income**
2 **customers, what about hospitals or schools or**
3 **daycares?**

4 A. I would agree those would be areas
5 you'd probably want to prioritize as well as
6 possible with main replacement projects.

7 **Q. You were here in the hearing room**
8 **yesterday?**

9 A. I was.

10 **Q. Did you hear testimony from Mr. Aiton**
11 **about the recordkeeping practices in St. Louis**
12 **County?**

13 A. Yes.

14 **Q. What was your reaction to that?**

15 A. I don't know that I have a reaction
16 offhand, to be quite honest.

17 **Q. So it didn't -- there was no -- you**
18 **didn't have any thought about whether the company**
19 **should have been updating their tap records when**
20 **they were replacing mains in St. Louis County?**

21 A. I think in hindsight it's easy to say
22 that, and I think going forward I would certainly
23 hope they would keep reasonable records. But the
24 historical context also has to be kept in mind
25 where the issue lead line replacement was not

1 prioritized until recently, as I understand the
2 testimony yesterday. So to that extent, that kind
3 of limits what we can say in hindsight should have
4 been done.

5 **Q. Well, based on that, do you think the**
6 **company considered lead service lines to be a**
7 **health risk for the last 15 years?**

8 A. I would only be able to go off of
9 what I heard yesterday. I would probably defer to
10 the company as to what they thought.

11 **Q. But you don't draw any inferences**
12 **based on the fact that they didn't keep any**
13 **documents?**

14 MR. COOPER: Objection, your Honor.
15 I believe he said he doesn't know anything
16 personally about this subject matter, and anything
17 he would say would be hearsay at this point.

18 JUDGE BURTON: I'll go ahead and
19 allow him to answer to as much as he knows.

20 THE WITNESS: Yeah. I think -- I
21 really can't speak for what the company thought.
22 Again, I think, you know, hindsight is 20/20 as
23 they say, and going forward I would certainly hope
24 that there would be better recordkeeping.

25 BY MR. SMITH:

1 **Q. Were you here during my opening**
2 **statement?**

3 A. I was.

4 **Q. You're talking about hindsight. Were**
5 **you aware that in the 1980s lead was sort of a big**
6 **issue with leaded gasoline?**

7 A. I was, with the caveat that I was
8 born in '87.

9 **Q. I was born in '86, so...**
10 **What about, you know, lead paint, has**
11 **that been an issue?**

12 A. Oh, yeah. I mean, there have been a
13 lot of different sources of lead historically. I
14 think the issue is not so much what is the biggest
15 source but, you know, reduction of all sources if
16 possible, because there's no safe blood level for
17 children.

18 **Q. So you weren't -- I guess the**
19 **community wasn't blind to this issue for the last**
20 **15 years, correct?**

21 A. Overall, I would say so, but I can't
22 speak to each and every community member certainly.

23 **Q. In terms of DE's perspective on what**
24 **a collaborative might involve, what are your**
25 **thoughts on disclosure?**

1 A. Can you clarify what you mean by
2 disclosure?

3 **Q. Yeah. Disclosure of known lead**
4 **service lines.**

5 A. I think that's an important issue
6 that could be looked at, I mean, within reason.
7 Again, one of our primary concerns with the
8 original collaborative proposal was that it might
9 be too broad in scope for something that would be
10 paid for by Missouri-American ratepayers. So
11 within reason, I think it's something that could be
12 looked at.

13 **Q. And you think if the scope were**
14 **narrowed to, say, include just Missouri-American**
15 **ratepayers, that would be something that the**
16 **Division of Energy might be more comfortable with?**

17 A. Along with some other conditions or
18 considerations, I would say that would be one of
19 them.

20 **Q. And so would you say there are other**
21 **relevant stakeholders that might have other**
22 **opinions about conditions that they would want to**
23 **consider?**

24 A. I mean, it depends what stakeholders
25 you get, but I would assume they would be

1 interested in certain other considerations. I
2 should probably clarify what I mean by conditions
3 and considerations. I was speaking more to, for
4 example, the funding level of the collaborative,
5 the -- to what extent, you know, allowing the
6 company's program to continue until such time as,
7 you know, we determined if there is a suitable
8 alternative. Those are the kinds of things I was
9 talking about as conditions and considerations.

10 **Q. And you're aware that Dr. Marke in**
11 **his testimony, based on his proposed pilot, would**
12 **allow the company's lead service line replacement**
13 **to continue concurrent with the pilot? Did you see**
14 **that in his testimony?**

15 A. I don't entirely agree with that
16 characterization.

17 **Q. You would agree, though, that there**
18 **would be lead service line replacement occurring up**
19 **to a certain amount during the collaborative,**
20 **correct?**

21 A. That's the characterization that I
22 would agree with. I think the -- one of the issues
23 with the collaborative was that it would limit how
24 many lead service lines could be replaced. I mean,
25 the two possible adverse outcomes from that are,

1 one, that they do -- the company does main
2 replacements and doesn't replace lead service
3 lines; therefore, you end up with potential lead
4 contamination. The other possibility being that
5 the company avoids areas with lead service lines
6 when they reach that cap for those one or two
7 years, and then you have mains that need to be
8 replaced that aren't being replaced. So that's my
9 concern with capping the amount.

10 **Q. Well, this wouldn't, I guess -- do**
11 **you agree that ten years is the right time horizon**
12 **or do you think that might be something the**
13 **collaborative would consider?**

14 A. While the collaborative could
15 consider it, I think that does get into some
16 questions about the company's operational practices
17 and to what extent we can micromanage, if you will.
18 I certainly think if you could extend the period it
19 might be good, but there's also the question of,
20 you know, what are the risks we're taking with
21 leaving the lead service lines in the ground.

22 **Q. So yesterday Mr. Aiton was talking**
23 **about how these replacements are married to main**
24 **replacements, correct?**

25 A. Right.

1 **Q. And so it was also discussed that in**
2 **St. Louis County a lot of those mains are new,**
3 **right?**

4 A. Yes. That -- yes, that sounds
5 familiar.

6 **Q. And so those lead service lines**
7 **wouldn't realistically be able to be repaired in**
8 **the ten-year time period unless those mains were**
9 **taken out early; is that your understanding?**

10 A. I'd say that that makes sense, with
11 the caveat that I think a lot of the concern that
12 we're going through and why we're going through the
13 replacements, my understanding is it's in response
14 to avoiding partial replacements and avoid -- and
15 work that would have -- avoiding impacts from
16 underground construction work that could impact --
17 that could disturb the lead service lines.

18 And to the extent you're not
19 replacing the mains in an area, that takes away
20 some of the risk of disturbance. I mean, of course
21 there are other projects that could come through,
22 but you're at least re-- that's at least one risk
23 you don't have to worry as much about.

24 **Q. Do you agree there might be some**
25 **value in making sure the company coordinates**

1 with -- so the company has knowledge through these
2 tap cards of its lead service lines to some extent;
3 you'd agree?

4 A. To some extent is my understanding.

5 Q. And so when there's construction
6 projects, the city's aware of those construction
7 projects. Do you think it might make sense for the
8 cities and the companies to coordinate on that?

9 A. I would think so, and my
10 understanding is that there is some coordination
11 already. I mean, I don't really speak much to
12 the -- I don't think I speak to the coordination
13 issue really in testimony that I can recall, but I
14 would certainly hope that there would be
15 coordination.

16 Q. You would agree that Dr. Marke
17 covered that issue related to Jefferson City in his
18 testimony?

19 A. Do you have a copy and page number,
20 line number that I could look at to refresh my
21 memory?

22 Q. Sure. It is confidential, though.

23 A. Oh. I mean, I'll go ahead and say
24 that broadly, yes, I recall that he did discuss
25 that issue. I wasn't honestly as focused on that

1 portion of his testimony.

2 Q. Do you think that's something that
3 might merit some discussion?

4 A. Certainly I think it could be
5 discussed. Again, you have to be careful not to go
6 too far into the weeds of micromanaging the
7 company's day-to-day operations, but I think it is
8 something that could be a reasonable topic.

9 Q. You were talking about 20/20. If in
10 four years the company hasn't done a lot of these
11 things that could have been done, such as
12 prioritization or maybe the benefit isn't there, I
13 mean, don't we want to address this right now
14 rather than --

15 A. Can you clarify what you mean by
16 20 -- talking about 20/20?

17 Q. Well, I think you were saying that
18 St. Louis County, the fact that they didn't keep
19 records, well, it's easy to look back and see what
20 they should have been doing, right?

21 A. Right.

22 Q. So in a future rate case, when this
23 issue comes up again, do we want to be saying in
24 that rate case here's what you should have been
25 doing or do we want to address that in this rate

1 **case?**

2 A. I think you can -- if necessary, some
3 of it can be addressed in this case. I don't know
4 that I have a sense of, you know, what I would
5 suggest should be ordered with respect to that in
6 this case, but I think it is something that could
7 be addressed in this case and future cases.

8 I did want to get to another point
9 you talked about, which is the benefits. And I
10 guess I'm struggling with the concept of
11 quantifying benefits from avoiding lead poisoning.
12 I'm struggling with how you put a dollar value on
13 avoiding adverse impacts on children and pregnant
14 people.

15 **Q. Well, have you looked at the**
16 **research?**

17 A. To which research are you referring?

18 **Q. Do you have any medical background?**

19 A. No, but I --

20 **Q. Did you look at Dr. Marke's testimony**
21 **regarding the research he did do relating to lead**
22 **poisoning?**

23 A. I did, but my understanding is that
24 it's pretty unequivocal that you don't want lead
25 poisoning from a health perspective, and you don't

1 really have to be a doctor to know that.

2 **Q. But I guess isn't it true that today**
3 **lead paint is the primary source of concern?**

4 A. I would agree that lead pipes may not
5 be the primary source, but they are a source.
6 Again, if there's no safe blood level in children,
7 then it makes sense to reduce your potential
8 sources of exposure.

9 **Q. Well, by no safe level, I mean, let's**
10 **draw that out because I think Dr. Marke has various**
11 **recommendations from the CDC and for different**
12 **blood levels; is that correct? Do you recall that?**

13 A. I recall that, and I think the
14 distinction here is between action levels and
15 levels from the perspective of health policy, and
16 it's right on the CDC website that the safest level
17 is zero.

18 **Q. Well, the safest level is zero,**
19 **that's true, I think, but do you believe that there**
20 **is any -- is there a cost ceiling that you have to**
21 **eradication?**

22 A. I would certainly expect reasonable
23 costs, and I think that's one thing that the
24 Commission can look at, but I think portraying it
25 as a cost/benefit analysis kind of misses the point

1 of reducing public health risks.

2 **Q. But if you don't know what those**
3 **health risks are, doesn't that muddy the cost/**
4 **benefit analysis?**

5 A. I guess I would disagree with the
6 premise that we don't know what the health risks
7 are of lead.

8 **Q. Are you personally aware of any**
9 **waterborne lead poisoning that occurred in a**
10 **Missouri-American Water customer?**

11 A. While I'm not aware of that, I think
12 the issue here is more what could happen without
13 action. I think it's not an issue of past
14 performance; it's an issue of what could happen in
15 the event that there is potentially a partial line
16 replacement or disturbance of the line due to
17 infrastructure work. I think that is the real
18 issue that we're looking at.

19 **Q. Well, if that is the real issue, you**
20 **would agree that a line can be returned to**
21 **stability in a short period of time, correct, a**
22 **lead service line?**

23 A. My understanding from the testimony
24 yesterday is that that's a pretty variable time
25 span, and I think the question then becomes so what

1 do you expect the customer to do while you're
2 waiting for it to return to stability? Do you
3 expect them to not use any water and to stay in a
4 hotel? Do you expect them to do constant sampling?
5 Do you expect them to run their water for 30
6 seconds every time they get up at night to take a
7 drink?

8 **Q. What about a filter?**

9 A. The filter I think is a bit of a
10 problematic solution. I mean, it's going to
11 depend -- my understanding is it's going to depend
12 on the setup and upkeep of the filter. It's not
13 clear exactly how long you're going to have to have
14 the filter. And fundamentally, it doesn't really
15 get rid of the source of the problem.

16 **Q. So during the last 15 years under**
17 **ISRS, were those partial replacements or were they**
18 **whole replacements?**

19 A. I can't really speak to that, except
20 for what I heard yesterday. My understanding is
21 that there may have been some partial replacements,
22 but again, I can't really speak to that too well,
23 other than what I heard yesterday.

24 **Q. I thought I heard you say earlier**
25 **something about how on-bill financing or some sort**

1 of other low interest loan might be something that
2 could be studied in the collaborative; is that
3 correct?

4 A. I think so, yeah, with the caveat
5 that, again, you know, if you're a low-income
6 customer, then you're not going to have much of an
7 ability to take out any sort of loan. You're going
8 to be pretty stretched as it is.

9 So I think it would be for certain
10 groups of customers that that kind of solution
11 could be appropriate, depending upon, you know,
12 other factors like the company's billing system and
13 so on.

14 Q. Are you familiar with what happened
15 in Madison, how they treated that?

16 A. Just mostly, you know, like what I've
17 heard yesterday. I'm not too familiar with the
18 Madison situation, to be quite honest.

19 Q. Are you familiar with it to the
20 extent it would have been contained in Dr. Marke's
21 testimony?

22 A. Can you point me to a specific round?

23 Q. Well, let me ask you, are you
24 familiar with the loan part of that, that -- and
25 the money part of it, that there was a certain

1 amount paid to defray the cost of the loan for a
2 customer?

3 A. I'm not as familiar with that. It's
4 been a little while since I've looked at his
5 testimony.

6 Q. If you're not familiar with that, I
7 don't think I'll ask you any more questions about
8 that.

9 A. Okay.

10 MR. SMITH: I have no further
11 questions. Thank you.

12 THE WITNESS: Thank you.

13 CHAIRMAN HALL: I have no questions.
14 Thank you.

15 COMMISSIONER KENNEY: No questions.

16 QUESTIONS BY JUDGE BURTON:

17 Q. Although he's not here with us in
18 person, he is here with us in spirit and through
19 the power of the Internet, and Commissioner Rupp
20 had some questions for you.

21 A. Hello, Commissioner Rupp.

22 Q. In your surrebuttal testimony you
23 recommended several conditions on the
24 implementation of inclining block rates in this
25 case. You stated that inclining block rates

1 **should be delayed if the Commission orders further**
2 **district consolidation in this case. Is there any**
3 **scenario in which the Commission ordered further**
4 **district consolidation that you would be**
5 **comfortable recommending moving to an inclining**
6 **block rate?**

7 A. I think we would have to look at the
8 potential bill impacts of specific inclining block
9 rates, which gets a little complicated because
10 obviously you have to know what the specific
11 proposal is that you're looking at, but it's going
12 to vary by case.

13 In this case we're looking at some
14 pretty high bill impacts, for example, on the
15 Joplin area, looking at those preliminary numbers.
16 So if you were to add -- I guess if you add
17 consolidation, it would probably lower the bill
18 impacts in Joplin, but then, of course, the problem
19 is you end up with a change in bill impacts in,
20 say, St. Louis. So it's, for lack of a better
21 term, messy.

22 **Q. Okay. You stated the pilot inclining**
23 **block rate should be applied to a broader**
24 **geographic area than Joplin. Is there one of the**
25 **three water districts that stands out as a clear**

1 **candidate for the pilot program?**

2 A. Well, my understanding is that
3 Joplin, the Joplin area does have some water --
4 some issues with water supply, both from this case
5 and from some recent discussions with DNR --

6 **Q. Can you explain?**

7 A. -- Department of Natural Resources.
8 I'm sorry?

9 **Q. Can you explain what you mean by**
10 **issues with water supply?**

11 A. Not precisely. I just know that
12 there have been some issues with just getting an
13 adequate supply of water. It's just my broad
14 understanding. So if it weren't for the increases
15 that we're looking at in this case, the Joplin
16 district would probably have been a good candidate
17 to start with, but again, given those impacts, we
18 have to be a bit cautious and gradual.

19 **Q. So would there be other**
20 **characteristics other than water supply issues when**
21 **you gave that example for Joplin that you think the**
22 **Commission should use in deciding?**

23 A. I certainly think you could come up
24 with some other ones. I mean, fundamentally I
25 remember in the last Report and Order that the

1 Commission's point was that it wasn't just about
2 water scarcity; it was about the so-called energy/
3 water nexus and, you know, saving energy while
4 you're saving water.

5 So I think you could look on a
6 district-specific basis to see if there are other
7 candidates, but I think part of that consideration
8 has to be the potential bill impacts, which is --
9 I think that's part of why we've gotten into the
10 collaborative proposal is, you know, we recognize
11 that while maybe there should have been information
12 in this case, there wasn't. And this is a way to
13 make sure that we have that information on a
14 going-forward basis, so in the next rate case
15 anybody who wants to propose an inclining block has
16 the tools and the means to do so.

17 **Q. Other than the examples you've**
18 **provided as far as rate impacts, water supply,**
19 **electric costs, are there any other considerations**
20 **the Commission should have when deciding on a**
21 **district or a subdistrict for a pilot program?**

22 A. I mean, you could look at consumer
23 acceptance of the proposal because, I mean, another
24 possibility is if you just implement an inclining
25 block rate without going through all of the

1 necessary work to think about it, then you could
2 have blowback, and that could limit the
3 palatability, if you will, of inclining blocks in
4 the water. But I honestly cannot think of all of
5 the things you would need to look at off the top of
6 my head.

7 **Q. You also recommended that customers**
8 **on a pilot inclining block rate should be presented**
9 **with shadow billing that compares their bills under**
10 **single block volumetric rate. Have you had any**
11 **response from your testimony from Missouri-American**
12 **Water Company on that?**

13 **A. I have had some response. I don't**
14 **know that I can get into it because it was in the**
15 **context of a settlement discussion, but yes.**

16 **Q. And Missouri-American Water Company's**
17 **last rate case hearing, the Commission ordered the**
18 **company at Division of Energy's recommendation and**
19 **any other party who had the resources to file bill**
20 **impact analysis using stipulated revenue**
21 **requirement to show its impact on each district**
22 **under the various consolidation proposals.**

23 **Do you think a similar bill impact**
24 **analysis would be helpful in this proceeding to**
25 **determine bill impacts and stipulated revenue**

1 **requirement on each of the three water districts**
2 **under Missouri-American's proposed inclining block**
3 **rate?**

4 A. I absolutely think that's a good
5 idea, especially, you know, since we still have
6 these outstanding -- the outstanding question of
7 consolidation. Customer charge is still
8 outstanding to some extent. So I think there are a
9 lot of good reasons to look at this.

10 JUDGE BURTON: Okay. Commissioner
11 Rupp thanks you for your answers.

12 THE WITNESS: You're welcome.

13 JUDGE BURTON: Any recross from
14 Public Counsel?

15 MR. SMITH: No, thank you.

16 JUDGE BURTON: Redirect? I
17 believe --

18 MR. COOPER: No questions from the
19 company.

20 REDIRECT EXAMINATION BY MR. POSTON:

21 **Q. There was discussion with Mr. Smith**
22 **about if the company were not to continue with this**
23 **program and they were to identify a main that had**
24 **lead, that they would potentially just leave that**
25 **in the ground and move on.**

1 **Do you think if they did that, just**
2 **left the lead line in the ground, that they would**
3 **be fulfilling their obligation to provide safe and**
4 **adequate service?**

5 A. No, I don't think they would be. And
6 I mean, part of that would be the lead line itself,
7 but there would also be the issue of leaving a main
8 in the ground that would otherwise have needed
9 replacing.

10 MR. POSTON: Thank you. That's all I
11 have.

12 JUDGE BURTON: Okay. Thank you.
13 You're excused.

14 Public Counsel, are you ready to call
15 your first witness?

16 MR. SMITH: Yes. Just a second.
17 (Witness sworn.)

18 JUDGE BURTON: You may be seated.

19 KERI ROTH 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. Keri Roth, K-e-r-i, R-o-t-h.

24 **Q. And by whom are you employed?**

25 A. Missouri Office of the Public

1 Counsel.

2 Q. Did you prepare or cause to be
3 prepared in this case direct testimony, rebuttal
4 testimony, rebuttal confidential testimony and
5 surrebuttal testimony?

6 A. Yes.

7 Q. And do you have any corrections to
8 make to those?

9 A. No, I do not.

10 MR. SMITH: OPC has marked those as
11 Exhibits 210, 211, 212 and 213, and at this time
12 would offer those exhibits into evidence.

13 JUDGE BURTON: Exhibit 210, which is
14 the direct testimony of Keri Roth, 211, which is
15 the rebuttal testimony of Keri Roth public version,
16 Exhibit 212, which is the confidential version of
17 the rebuttal testimony of Keri Roth, and 213, which
18 is the public version of the surrebuttal testimony
19 of Keri Roth have been offered. Are there any
20 objections?

21 (No response.)

22 JUDGE BURTON: Seeing none, they are
23 received.

24 (OPC EXHIBITS 210, 211, 212 AND 213
25 WERE MARKED AND RECEIVED INTO EVIDENCE.)

1 MR. SMITH: OPC would tender Ms. Roth
2 for cross-examination.

3 JUDGE BURTON: Division of Energy?

4 MR. POSTON: No questions.

5 JUDGE BURTON: Staff?

6 MS. ASLIN: Thank you.

7 CROSS-EXAMINATION BY MS. ASLIN:

8 Q. Good morning, Ms. Roth.

9 A. Good morning.

10 Q. I just have a couple of questions for
11 you. Do you agree with Staff witnesses McMellen
12 and Merciel that the costs associated with the lead
13 service line replacement program should not be
14 booked in Account 345 as recommended by the
15 company?

16 A. Yes, I would agree with that.

17 Q. Would you agree that those costs
18 should be booked in Account 186?

19 A. OPC's position is that we're opposed
20 to the costs altogether. So I would say no, we
21 don't agree with being booked in Account 186.

22 Q. In the event that the Commission were
23 to approve the recovery of lead service main costs,
24 what would be OPC's recommendation?

25 A. I would recommend putting into

1 Account 186 if the Commission were to approve the
2 costs.

3 MS. ASLIN: Thank you. No further
4 questions.

5 MR. COOPER: No questions, your
6 Honor.

7 JUDGE BURTON: Any questions from the
8 Bench?

9 CHAIRMAN HALL: No questions. Thank
10 you.

11 COMMISSIONER KENNEY: No questions.
12 Thank you.

13 JUDGE BURTON: Thank you. You're
14 excused.

15 Please raise your right hand.

16 (Witness sworn.)

17 JUDGE BURTON: You may be seated.

18 JOHN A. ROBINETT testified as follows:

19 DIRECT EXAMINATION BY MR. SMITH:

20 Q. Mr. Robinett, would you please state
21 and spell your name for the court reporter.

22 A. John A. Robinett, and it's
23 R-o-b-i-n-e-t-t.

24 Q. And by whom are you employed,
25 Mr. Robinett?

1 A. The Missouri Office of the Public
2 Counsel.

3 **Q. And did you prepare or cause to be**
4 **prepared in this case direct testimony, rebuttal**
5 **testimony, confidential rebuttal testimony, and**
6 **surrebuttal testimony that's been marked as**
7 **Exhibits 214 through 217?**

8 A. I did.

9 **Q. Do you have any corrections to make**
10 **to that testimony?**

11 A. I do not.

12 **Q. And if I were to ask you those**
13 **questions again today, would your answers be the**
14 **same or substantially the same?**

15 A. They would.

16 MR. SMITH: At this time I would
17 offer Exhibits 214 through 217.

18 JUDGE BURTON: Exhibits 214 through
19 217 have been offered. Are there any objections?

20 (No response.)

21 JUDGE BURTON: Seeing none, they are
22 admitted.

23 (OPC EXHIBITS 214, 215, 216 AND 217
24 WERE MARKED AND RECEIVED INTO EVIDENCE.)

25 MR. SMITH: OPC would tender

1 Mr. Robinett for cross-examination.

2 MR. COOPER: No questions.

3 MS. ASLIN: No questions.

4 JUDGE BURTON: Any questions from the
5 Commissioners?

6 CHAIRMAN HALL: I have no questions.

7 Thank you.

8 COMMISSIONER KENNEY: No questions.

9 JUDGE BURTON: Thank you.

10 THE WITNESS: Thank you.

11 (Witness sworn.)

12 JUDGE BURTON: You may be seated.

13 GEOFF MARKE testified as follows:

14 DIRECT EXAMINATION BY MR. SMITH:

15 Q. Dr. Marke, would you please state and
16 spell your name for the court reporter.

17 A. It's Geoff, G-e-o-f-f, Marke,
18 M-a-r-k-e.

19 Q. And by whom are you employed?

20 A. Missouri Office of Public Counsel.

21 Q. Did you prepare or cause to be
22 prepared direct testimony, direct confidential
23 testimony, rate design direct testimony, rate
24 design confidential direct testimony, rebuttal
25 testimony, confidential rebuttal testimony, rate

1 **design rebuttal testimony, and surrebuttal**
2 **testimony in this case?**

3 A. Yes.

4 **Q. Do you have any corrections to make**
5 **to those exhibits?**

6 A. I do have one correction.

7 **Q. Okay.**

8 A. On my surrebuttal testimony -- I
9 apologize. This is my rebuttal testimony.

10 JUDGE BURTON: Could you please
11 identify which exhibit number?

12 BY MR. SMITH:

13 **Q. Yes. So is this your rate design**
14 **rebuttal testimony or your --**

15 A. It's the one on January 17th.

16 **Q. Okay.**

17 A. No. This is revenue requirement
18 rebuttal.

19 **Q. So would this be the confidential**
20 **portion?**

21 A. This would not be the confidential
22 portion, no.

23 **Q. So Exhibit 204.**

24 A. In my rebuttal testimony I reference
25 a statute section. I put down on page 9, Table 1,

1 I've got 382, 382 and 381. I think those are
2 actually statutes for insurance. It should be 386
3 all the way down, and then 386 again referenced on
4 that page 9. I was not referring to insurance.

5 **Q. So the testimony should read in each**
6 **of those tables --**

7 A. 386 and then the following numbers.

8 **Q. Okay. And would that -- that change**
9 **would be made between lines 1 through 8?**

10 A. That's correct.

11 **Q. Okay. Do you have any other**
12 **corrections to be made?**

13 A. I do not.

14 **Q. Subject to those corrections, if I**
15 **were to ask you the same questions that appear in**
16 **your prefiled testimony, would your answers be the**
17 **same or substantially the same?**

18 A. Yes, they would.

19 MR. SMITH: I would move to offer
20 Exhibits 200 through 207.

21 JUDGE BURTON: Any objections?

22 (No response.)

23 JUDGE BURTON: Exhibits 200 through
24 207 are admitted.

25 (OPC EXHIBITS 200 THROUGH 207 WERE

1 MARKED AND RECEIVED INTO EVIDENCE.)

2 MR. SMITH: I tender Dr. Marke for
3 cross-examination.

4 JUDGE BURTON: Staff?

5 CROSS-EXAMINATION BY MS. ASLIN:

6 Q. Good morning, Dr. Marke.

7 A. Good morning.

8 Q. At various points in your testimony,
9 you question the legality of Missouri-American's
10 lead service line replacement program. Do you
11 recall that?

12 A. I do.

13 Q. Does this refer to anything other
14 than OPC's argument that the company's current
15 practice is a tariff violation?

16 A. That's my understanding.

17 Q. So in your view, would a tariff
18 change theoretically correct this problem?

19 A. I can't speak to that.

20 Q. And in your view, would OPC's pilot
21 program require a change in the company's tariff
22 for the pilot program to be lawful?

23 MR. SMITH: Objection. Calls for a
24 legal conclusion.

25 THE WITNESS: I don't think I can

1 speak to that either.

2 MS. ASLIN: At this time I would like
3 to mark an exhibit. It's a portion of the
4 transcript from the AAO hearing that we will mark
5 as Exhibit 135. We can offer the entire transcript
6 as an exhibit, but at this time we just have two
7 pages.

8 JUDGE BURTON: I would prefer if we
9 just go ahead and include the actual transcript as
10 an exhibit and reference to that rather than
11 piecemeal it by pages.

12 MS. ASLIN: Okay. We can provide
13 that.

14 MR. WESTEN: All we have at the
15 moment is the one page, but we can provide the
16 entire transcript as an exhibit.

17 MR. COOPER: Your Honor, the one item
18 about including the transcript in total, which I
19 generally am in favor of, but it seems like it
20 would be appropriate to include that portion of the
21 transcript that involves the testimony of witnesses
22 as opposed to that portion that's just opening,
23 opening statement that would precede the testimony
24 of a witness.

25 JUDGE BURTON: So the company is

1 requesting that the portion of the transcript
2 that's the opening statements and any responses
3 that the attorneys might make would be stricken
4 from the record?

5 MR. COOPER: That's where I'm
6 thinking. I guess I'm starting with the opening
7 statements of course are not evidence, and I
8 wouldn't think that those would be cited by the
9 Commission in its decision ultimately.

10 Responses to the Commission
11 statements is probably a little different than
12 something I'd given consideration to previously.

13 JUDGE BURTON: For charity's sake, I
14 would overrule that objection and just have
15 everything in. Any comments if anyone were to
16 attempt to reference statements made by any of the
17 attorneys in opening statements could be discussed
18 and countered in any briefing.

19 But for clarity for the record, let's
20 go ahead and identify which exhibit the transcript
21 would be marked as.

22 MS. ASLIN: It will be 135.

23 JUDGE BURTON: And that would be the
24 transcript that's Volume 2 from the September 27,
25 2017 evidentiary hearing?

1 MS. ASLIN: That's correct.

2 JUDGE BURTON: And that's in File No.
3 WU-2017-0296?

4 MS. ASLIN: Yes.

5 JUDGE BURTON: Okay.

6 BY MS. ASLIN:

7 Q. All right. Dr. Marke, starting on
8 page, says 293 at the top, do you recognize these
9 question and answers as part of redirect of you by
10 Mr. Tim Opitz?

11 A. Would you like me to read them?

12 Q. Well, just at this moment I'm --

13 A. They look familiar.

14 Q. Okay. And at the AAO hearing,
15 starting at line 16, you were asked the question,
16 is there anything that the Commission should know
17 about past practice and future -- guaranteeing
18 future compliance, correct?

19 A. Correct.

20 Q. And if you could just read your
21 answer to that question. The first two paragraphs
22 will be sufficient.

23 A. When Public Counsel sat back and
24 looked at sort of a worst case scenario here, we
25 tried to figure out, you know, how much risk

1 exposure our ratepayers are looking at in terms of
2 public health. The default answer when other
3 parties have pointed to this was Flint, Michigan.
4 I was shocked going through the Flint information
5 to the point where, you know, I contacted -- I
6 contacted Flint, Michigan and asked, is this really
7 what I'm seeing?

8 **Q. So my question for you is, who did**
9 **you contact in Michigan?**

10 A. That information is listed in the WU
11 case. I have a list of contacts that I made
12 throughout my investigation. I have it here, in
13 fact. I've got it listed here as GM-1. I don't
14 know which version of the testimony is --

15 **Q. Do you recall -- if you don't know**
16 **the name of the person that you contacted, do you**
17 **know what -- who were they? What do they -- are**
18 **they in the government?**

19 A. Yes.

20 **Q. Okay.**

21 A. And it is listed as an unnamed
22 representative on my list. But yes, I contacted
23 Michigan Department of Environmental Quality. I
24 also contacted the University of Michigan. I
25 contacted Mark Edwards, who was the Virginia Tech

1 researcher that first investigated --

2 **Q. Did you contact anyone specifically**
3 **in Flint?**

4 A. Yes.

5 **Q. Okay. And what sort of conversation**
6 **did you have with them?**

7 A. So my focus was on Flint -- and I
8 contacted the CDC in regards to their blood lead
9 levels. The discussion that I had with Flint was
10 to verify that the blood lead levels of the
11 children during the Flint crisis, if the elevated
12 levels were consistent with what I was -- what I
13 had put in for exhibits, which did not show an
14 abnormal spike.

15 MS. ASLIN: I would move for the
16 admission of Exhibit 135 at this time.

17 THE COURT: Okay. Exhibit 135 is the
18 transcript that we've been discussing from the
19 prior evidentiary hearing. Subject to Mr. Cooper's
20 objection, which I'll overrule, it will be
21 admitted.

22 (STAFF EXHIBIT 135 WAS RECEIVED INTO
23 EVIDENCE.)

24 BY MS. ASLIN:

25 **Q. I just have a couple more questions.**

1 A. If I may, I might have misspoke when
2 I said I spoke directly with the Flint
3 environmental. It's the county. It's Genesee
4 County.

5 **Q. Okay. Thank you. Do you have any**
6 **medical background?**

7 A. I don't.

8 **Q. And we've heard a lot of talk the**
9 **past couple days about various sources of lead**
10 **contamination, including lead paint. Would you**
11 **agree that the only source of lead contamination**
12 **that Missouri-American could reasonably control**
13 **would be exposure through lead pipes, as a water**
14 **company?**

15 A. Yes. Can I qualify that statement?

16 **Q. I'll let your counsel redirect you on**
17 **that.**

18 A. Okay.

19 MS. ASLIN: Thank you. No further
20 questions.

21 MR. MILLS: No questions.

22 JUDGE BURTON: Mr. Cooper?

23 MR. COOPER: Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. COOPER:

25 **Q. In your direct testimony on rate**

1 design, I believe you suggest that approval of
2 Missouri-American's proposed lead service line
3 replacement program, and this part's a quote from
4 your testimony, would essentially lead to a
5 complete privatization of water service in
6 Missouri. Is that a correct -- did I quote you
7 correctly?

8 A. I believe so.

9 Q. And I would first note that you use
10 the word would, not could. So apparently you're
11 testifying that that's a certainty, that approval
12 of this lead service line replacement program would
13 result in the complete privatization of water
14 service in the state of Missouri; is that correct?

15 A. Yes.

16 Q. And do you know how many municipal
17 owned water systems there are in the state of
18 Missouri?

19 A. A lot. I couldn't tell you an exact
20 number, no.

21 Q. Hundreds maybe?

22 A. Hundreds.

23 Q. So going back to the fact that you
24 say it would result, how quickly before all those
25 hundreds of municipal systems in Missouri are

1 **privatized if the Commission would approve this**
2 **program in this case?**

3 A. I think context is important. You
4 know, when I made that comment, it was in reference
5 to both -- two issues, both single-tariff pricing
6 as well as the lead line replacement. So it's the
7 combination of those two. I think that would spur
8 that activity and incentivize the privatization of
9 utilities.

10 **Q. Have you given any consideration to,**
11 **just as a basic matter, how many dollars would be**
12 **required to purchase those hundreds of municipal**
13 **systems?**

14 A. Quite a lot.

15 MR. COOPER: That's all the questions
16 I have.

17 JUDGE BURTON: Any questions from the
18 Commission?

19 CHAIRMAN HALL: Yeah.

20 QUESTIONS BY CHAIRMAN HALL:

21 **Q. Good morning.**

22 A. Good morning.

23 **Q. Were you in the hearing room**
24 **yesterday?**

25 A. I was.

1 **Q. Did you hear Mr. Aiton on behalf of**
2 **Missouri-American describe the company's main**
3 **replacement program and how it prioritizes those**
4 **projects?**

5 A. I did hear that.

6 **Q. Did you have any concerns about that**
7 **program as described yesterday?**

8 A. Yes, I did.

9 **Q. Please explain.**

10 A. If I may, I'd reference back to Staff
11 witness Merciel. When he was crossed and asked
12 about if he was familiar with the main replacement
13 program, he suggested to us he was back in the
14 1990s. It's 2018 now.

15 I haven't seen a main replacement
16 program. In the last case, as part of our
17 condition to move toward zonal pricing, there was a
18 condition that the company would go ahead and
19 deliver their capital expenditures, their future
20 five-year capital expenditures to parties on an
21 annual basis. That was an Excel spreadsheet. That
22 was essentially it.

23 But as far as the actual detail, as
24 far as where the mains were going to take place,
25 I've got no clue. So there's a lot of things that

1 I find troubling just from an oversight perspective
2 that we just don't know what's going on.

3 Q. Let me stop you there. In terms of
4 the criteria for prioritizing the projects --

5 A. Right.

6 Q. -- that were identified in
7 Mr. Aiton's testimony, do you have concerns about
8 those?

9 A. Yes.

10 Q. What are those concerns?

11 A. That there isn't a prioritization;
12 that right now it's -- as I understand it, the
13 company has put forward that their plan is to do
14 this on an ad hoc basis. As they move forward with
15 their main replacements, they have a cursory idea
16 of where there are existing leads. I've seen the
17 GIS map. I've got a visual of what -- essentially
18 what the company believes is there.

19 JUDGE BURTON: Could you clarify for
20 the record what GIS stands for?

21 THE WITNESS: Geographical
22 information system, I believe is the acronym that
23 it stands for. Those are based off of historical
24 tap records, and it's wildly different for
25 districts. You'll look at, say, another zone and

1 it looks like a shotgun shell. There's no rhyme or
2 reason as to why things are where they're at;
3 whereas, others might be heavily concentrated.

4 In St. Louis this is a problem
5 because we've had an ISRS for 15-plus years that's
6 moved forward. So my concern on a prioritization
7 level, and a lot of testimony and a lot of people
8 have come up here and really based their opinion on
9 the health risk.

10 Right now, if we were to move forward
11 with what the company's prioritizing, we're not
12 prioritizing those most susceptible to elevated
13 blood levels, schools, daycares, pregnant women,
14 children, any of that.

15 There's other issues that I've got,
16 but at a very high level it's a lack of
17 transparency right now, and that's -- that's what
18 we echoed in every testimony: Where's the
19 company's plan? Where's the company's plan?
20 Where's the company's plan? It wasn't until
21 surrebuttal that we got a page and a half of
22 testimony from witness Aiton.

23 You can contrast that with any other
24 state, with any other commission. It's night and
25 day.

1 BY CHAIRMAN HALL:

2 Q. So if the Commission were to believe
3 that the lead service line replacement program is
4 important and should be authorized and also
5 believes that the main replacement program is
6 important and should continue, what would you
7 recommend to the Commission in terms of what types
8 of -- what type of reporting requirements we should
9 require?

10 A. First, we are recommending
11 replacement, to a question that --

12 Q. Okay. Please. What reporting
13 requirements would you recommend that we require?

14 A. At a very, very high level, we need
15 to record what we discover. Right now that doesn't
16 exist. We say, what about the past lead lines?
17 That wasn't a priority for us. We have no clue
18 what's under ground. Moving forward just at a
19 very, very, very high level, just recording
20 everything that we see, so in the future --

21 Q. Who are we?

22 A. The utility have it flown back in
23 terms of part of the plan. If I'm making
24 suggestions here, then it's something that is
25 reported or it is included in the next rate case or

1 it is done on an annual basis. But absent that,
2 nobody's going to look at this.

3 Q. Okay. I'm -- we're kind of going in
4 circles here.

5 A. Okay.

6 Q. Let me start over. The main
7 replacement program as described by Mr. Aiton
8 yesterday in terms of how they prioritize it,
9 specifically concerning the main replacement
10 program, does OPC have any recommendations going
11 forward as to what type of reporting the company
12 should be required to comply with?

13 A. Where they plan on excavating, moving
14 forward on a month-to-month basis, on an annual
15 basis, this goes -- this reinforces our points as
16 far as --

17 Q. Okay. So you would recommend that
18 they on a month-to-month basis set forth the
19 projects that they are completing and that they are
20 starting, that they're spending money on? What,
21 all three?

22 A. This is similar to the practice that
23 the company is putting forward in West Virginia
24 where --

25 Q. Okay. So then what about a criteria

1 for prioritization, should that be set forth in
2 writing and supplied to the Commission and
3 interested parties?

4 A. I think so.

5 Q. Okay. Moving on to the lead service
6 line replacement component of this larger program,
7 what type of reporting would OPC recommend the
8 Commission require? And I understand that you've
9 got concerns with how they're operating the program
10 now. You've got an alternative. Putting that
11 aside, what type of reporting would it be in the
12 public interest for the company to provide on an
13 ongoing basis on this program from your
14 perspective?

15 A. Post test results I think would be a
16 good start. Right now the company's proposing to
17 do two post test results following a lead service
18 line replacement, so one several hours after, after
19 they go through a flushing, and then again 72 hours
20 later.

21 I would -- in my discussions with
22 Washington University, they had some more nuanced
23 perspective on that, but I would say that the
24 testing results would be helpful, if this is
25 indeed, you know, a fear as it's being portrayed.

1 If I could have just a second.

2 Q. Well, if you would prefer, maybe in
3 your post-hearing briefs and any party that was
4 interested could provide that information, what
5 type of reporting requirements the Commission
6 should require if this program is authorized.

7 A. I mean, unusual construction would be
8 one right off the bat, and what we're going to do
9 with vacant properties.

10 Q. Okay.

11 A. So yes, we can provide that
12 information.

13 CHAIRMAN HALL: Okay. Thank you.

14 QUESTIONS BY COMMISSIONER KENNEY:

15 Q. Good morning.

16 A. Good morning.

17 Q. I believe you were here yesterday --

18 A. I was.

19 Q. -- with your counsel when I just
20 asked him a couple questions.

21 A. Uh-huh.

22 Q. Going back to that, what's your
23 position if we -- regarding the customer service
24 line, if the company is replacing a main, they come
25 upon a -- and they have to disturb a customer's

1 service line and they do so, is it OPC's position
2 that the company should be reimbursed for the
3 replacement of that service line or that OPC
4 should -- is it your position they should not
5 replace that service line? What's your position?

6 A. So the answer that we put forward was
7 yes, they should be reimbursed. That's why we
8 proposed the pilot, because we feel like, by just
9 looking at that question, we're putting the cart in
10 front of the horse.

11 Q. I know, but I'm not asking about the
12 pilot. You answered that question. So there
13 should be -- your belief is that that line should
14 be replaced and the company should be reimbursed in
15 some form or some manner?

16 A. Within the context of the pilot.

17 Q. Well, let's say we don't do a pilot.
18 We're not going to do a pilot. We decide as a
19 condition we don't do that. Should that line be --
20 if the company comes upon that line, should they
21 just reconnect it or should they replace it?

22 A. I don't think I can give you the yes
23 or no question or response that you're probably
24 seeking here.

25 Q. Why is that? I mean, it's either

1 you've got to hook it back up or you've got to
2 replace it, one of the two. It's really yes or no.
3 It is a yes or no answer. I guess there could be
4 some extenuating circumstances.

5 A. I guess right now I don't think
6 it's -- what I've been advised is that it's not
7 legal, that it is a customer-owned property.

8 Q. Well, the legality of it, if they ask
9 the question would you like us to replace your
10 line, that you have lead in the line, we're going
11 to do it for free, that's -- I think it's legal.

12 A. Well, I don't think they're doing it
13 for free.

14 Q. Well, free to the customer. Telling
15 the customer you don't have to pay for it because
16 we have -- we get reimbursed by the Public Service
17 Commission. The Public Service Commission wants us
18 to protect you as a customer. We don't want you to
19 have lead in your lines for many reasons that you
20 don't want them to. So --

21 A. Then I guess I've got to say, where
22 do we draw the line here as to what's appropriate?
23 If the company doesn't want to take responsibility
24 of these lines after the fact but they want to get
25 a return of and on it moving forward.

1 Simultaneously keep in mind they've got an
2 unregulated affiliate that's trying to sell
3 insurance on these service lines.

4 Q. Okay. I'm not asking that question.
5 And I understand your position, but -- and I'm not
6 even talking about how they get reimbursed or how
7 much money they get or anything. But I remember
8 when -- and I do give you credit, when you talked
9 about an AAO in your testimony about pointing out
10 several of the homes that were being replaced and,
11 you know, very high-dollar homes.

12 A. Right.

13 Q. And it appears someone living in an
14 \$800,000 house, they'd have the money to spend the
15 \$4,000 to replace the lines themselves. I can
16 understand that. But there has to be a point --
17 let's go back to those places you pointed out in
18 your testimony where the majority of individuals,
19 young or old, who have higher lead levels is
20 poverty related.

21 A. Right.

22 Q. For a lot of different reasons. Lead
23 paint --

24 A. Right.

25 Q. -- in the old homes --

1 A. Right.

2 Q. -- and the dust. But regardless of
3 any of that, come upon a line, it's got to be
4 either spliced or replaced. Should the company
5 replace it or should the company splice it, not
6 taking into account any factor of the value of the
7 home, the wealth of the individual, because that --
8 in a situation when you come upon that line, you
9 replace that line, there's going to be -- I mean
10 the main, it's what do we do now?

11 A. I've wrestled with this a lot. I'm
12 not trying to be hyperbolic here. A lot of
13 sleepless nights trying to wrestle with this. I
14 live in an old home. Right? What would happen in
15 this sort of situation? And that's why I went out,
16 I made an active effort to speak with experts,
17 including the company that conducted tests on this
18 in terms of does it make -- the question I had was,
19 the analogy I made is if you looked at it like a
20 straw, and if you broke -- the straw isn't probably
21 the best analogy. If it's just a line -- chalk is
22 what we said, yes, a piece of chalk. If you broke
23 a piece of chalk, the current practice is a partial
24 replacement, that chalk gets everywhere. That's
25 essentially what we're talking about with the lead.

1 The question I had is, whether we
2 break it in the middle, we break it at the end,
3 you're still breaking it. We're still disturbing
4 lead at some point. Isn't there a chance that
5 there's heightened lead at least temporary right
6 there? Essentially the answer I got was yes,
7 maybe, we don't know.

8 **Q. I think the evidence shows that when**
9 **you break a lead line or you disturb it or cut it,**
10 **you're going to have some corrosion. As your**
11 **counsel said, it's temporary.**

12 A. Right.

13 **Q. And depending on how long that**
14 **temporary could -- it could -- on different lead**
15 **lines it could be. My question is, though, should**
16 **it be replaced or not? What's your thought? It's**
17 **just a simple question, yes or no. Regardless of**
18 **how much is replaced or how much it is.**

19 A. So I don't think it's a simple
20 question, and I guess that's where I'm struggling
21 with this.

22 **Q. You and your counsel are pretty good**
23 **at getting together and not saying yes or no.**

24 A. That's -- you know, again, I think we
25 could have taken a hard line stance and said no,

1 you can't do this. That's not the position we
2 took. I know it might come across that way here.

3 **Q. No. I understand you're not taking a**
4 **position, it seems like. You're not going to say a**
5 **yes or a no.**

6 A. We wanted to have it evidence based.
7 We wanted to have some support.

8 **Q. We have a pilot program, that's**
9 **your -- I was just trying to see what you -- what**
10 **your answer is. I'm not going to get there, and**
11 **that's okay.**

12 A. Okay.

13 COMMISSIONER KENNEY: All right.
14 Thank you.

15 QUESTIONS BY JUDGE BURTON:

16 **Q. How long does it usually take**
17 **whenever they decide we need to replace this main?**
18 **Have you reviewed that information?**

19 A. A main or a service line?

20 **Q. A main that has -- that they find**
21 **out, that the company finds out is connected to a**
22 **lead service line.**

23 A. It's going to vary. The excavation
24 process isn't simple. So in Indiana they passed a
25 statute, and part of that statute, we passed it

1 around and it has a series of questions to go ahead
2 and answer. One of them was the company had to
3 submit a plan to the Public Service Commission
4 there. They had to answer all of these questions,
5 and they did. They submitted it in January, real
6 detailed plan.

7 Gary Verdote, we actually -- he's in
8 the exact same building as the witnesses that have
9 come up here and testified. And in that plan they
10 said that we're essentially guessing. It could be
11 anywhere from -- for us to go ahead and finish
12 these lines that we think are out there could take
13 excess of 24 years or more.

14 **Q. That's not the question I had. When**
15 **the company says, okay, we need to replace this**
16 **main, it could be either part of their strategic**
17 **plan --**

18 A. Right.

19 **Q. -- it could be this main is leaking,**
20 **it's an emergency situation, right?**

21 A. Right.

22 **Q. So if that happens, how long do they**
23 **have to decide whether or not to replace the lead**
24 **service line?**

25 A. I don't think I could offer an exact

1 time. I think it would vary. It would be
2 speculative on my part.

3 **Q. Okay. Would you support part of a**
4 **requirement, if the Commission was to recommend**
5 **requirements of reporting, that the company have to**
6 **inform customers we're going to change your line in**
7 **a certain time frame or we're going to replace the**
8 **main and that might cause some damage and lead**
9 **leaking in your customer-owned service line?**

10 A. So I raised that, and that to me is a
11 real challenge here because in Missouri we're a
12 home ruled state. So there isn't any -- in terms
13 of actually what impact that might have on home
14 value, if you were to disclose to somebody that
15 they had a lead service line or if this became a
16 public issue and it became pressworthy, that's
17 essentially what happened in Flint. Flint got
18 categorically devalued. Their homes, everything
19 dropped. Right? Putting aside the water crisis
20 and everything else, whether valid or not, the
21 homes and the property, the businesses, everything
22 went down. That's our concern.

23 On the same token, if I had lead
24 service line, I think I would want to know. I
25 don't personally think I'm in a position to answer

1 that, and that's what -- that's what our hope was
2 with the pilot study is that that would get fleshed
3 out. We ultimately suggested that's a reason why
4 it should be part of -- in front of the Legislature
5 and the Governor.

6 **Q. Do you think the company should try**
7 **to approach third parties, either customer owners,**
8 **insurance programs, non-profits, grants, when they**
9 **go through this main and lead service line**
10 **replacement to see about alternative sources of**
11 **funding?**

12 A. It's going to be tough to get that.
13 I spoke with the Wealth Accumulation Center, which
14 is St. Louis Community Credit. It's a low-income
15 funding. I mean, there are ways that we could set
16 it up to make -- to target just at-risk homes or
17 low-income homes, and I think we would absolutely
18 be in support of that. That is worthwhile.

19 Again, to Commissioner Kenney's
20 point, whether or not we need to be subsidizing
21 million dollar homes in Ladue I've got less of an
22 appetite for.

23 Again, just pointing to Flint, the
24 problem with the contractors there is, as soon as
25 that became a national issue, what they estimated,

1 well, let's say \$3,000 a line, became a supply/
2 demand thing. As soon as this became public, your
3 contractors were able to bid up the price, and all
4 of a sudden 5,000, 6,000, 7,000, \$8,000.

5 **Q. So would you agree with the testimony**
6 **that the company has offered that using their**
7 **service providers, their contractors, or them being**
8 **able to negotiate on these contracts would offer a**
9 **cheaper price?**

10 A. You know, that's what the company
11 puts forward. I think that would be something that
12 would be appropriate to be included in a plan to
13 show here we've locked in those contractors at this
14 price, this is what we're planning on doing.

15 I mean, the problem with that is it
16 becomes an issue of scale and speed. How quickly
17 do you want this program, this lead problem
18 eradicated? It's not easy. It's not quick. This
19 is going to -- this problem will be continuing long
20 after we're all gone, even under the best of
21 circumstances.

22 **Q. Well, basing it off of the ten-year**
23 **plan that the company has put forward?**

24 A. I mean, I would say I have no faith
25 in the ten-year plan, none. These are -- they're

1 estimates and for what estimates are worth. They
2 will get bigger and they will get larger.

3 JUDGE BURTON: Okay. Thank you.
4 That's all the questions I have. Any recross by
5 Staff?

6 MS. ASLIN: No questions.

7 JUDGE BURTON: Mr. Cooper?

8 MR. COOPER: Yes, your Honor.

9 RECROSS-EXAMINATION BY MR. COOPER:

10 **Q. In response to a question about the**
11 **reporting requirements, I think you cited to**
12 **West Virginia as a sort of reporting requirement**
13 **model. Are you aware that the American Water sub**
14 **in West Virginia gets ISRS-like recovery for future**
15 **line replacements in West Virginia?**

16 A. It would not surprise me.

17 MR. COOPER: That's all the questions
18 I have.

19 JUDGE BURTON: Redirect?

20 MR. SMITH: Yes. Thank you.

21 REDIRECT EXAMINATION BY MR. SMITH:

22 **Q. Counsel for the company just asked**
23 **about West Virginia. Can you explain why**
24 **West Virginia was referenced?**

25 A. West Virginia was referenced because

1 I included a caption in my direct testimony of a
2 service map from West Virginia that essentially
3 shows here's where American Water, West Virginia
4 American Water is moving forward with projects,
5 showing you how ratepayer dollars are being spent.
6 We think that that is a good message. It is good
7 transparency.

8 **Q. Does that happen in real time?**

9 A. I don't believe so. I think I made
10 the caveat in my testimony that no doubt that there
11 would probably be improvements that we could make
12 with that.

13 **Q. And so can anyone see this map or --**

14 A. I'm assuming so. I was able to find
15 it on Google, so I would venture to say that
16 anybody that has access to the Internet.

17 **Q. Judge Burton had asked you some**
18 **questions about the ten-year plan. Why does the**
19 **ten-year plan give you pause?**

20 A. I guess again for reasons that I
21 stated earlier, and this was underscored I think in
22 the testimony of the witnesses that spoke
23 yesterday. The common theme that you kept hearing
24 was, we haven't done this before, this is new
25 terrain, we're going out, we don't know. I

1 affirmatively agree with all of that. Cutting into
2 somebody's property, potentially even into their
3 home, unfinished basements, there's grounding with
4 electric -- with the electric system, there are a
5 lot of variables that can drive the cost up.

6 If I may just -- and this is the
7 company's -- again, this is Indiana saying this,
8 but these costs do not include company personnel
9 time for engineering, planning, construction,
10 supervision or water quality testing. Contractor
11 cost isn't included in replacing the service line
12 into -- inside the house basement for most of the
13 services because most of the buildings thus far
14 have unfinished businesses (sic). Factors
15 impacting cost could include local codes and
16 requirements, changes in laws and standards, local
17 competitive market prices. The list goes on and
18 on.

19 And this is all public information.
20 You can -- you can access this today. I think the
21 docket, it's Cause No. 45043 in Indiana.

22 **Q. Do you believe that the ten-year plan**
23 **will replace all customer-owned lead service lines,**
24 **including the ones that were placed under ISRS?**

25 A. No. I think the company has put

1 forward that they don't intend to go back
2 retrospectively on the 15-plus years of ISRS
3 replacement where they have passed over lead lines.

4 This raises other equity issues in
5 terms of if we were to move towards single-tariff
6 pricing, because you're putting all of this cost on
7 St. Louis customers who aren't going to see any of
8 that benefit.

9 **Q. There were some questions also from**
10 **the Bench about other financing options. Can you**
11 **add to that? Were there any other financing**
12 **options you explored?**

13 A. I reached out to the National
14 Governors Association. This was probably about ten
15 months ago at this point. At the time the Trump
16 administration had put forward that they were
17 planning on moving forward with a large-scale
18 infrastructure investment. I reached out to the
19 National Governors Association with the hope of
20 essentially teeing up our pilot program as a
21 shovel-ready project to go ahead and attract future
22 funds.

23 There was a lot of -- again, the
24 response I got was very positive, and I was even
25 given reference in context to the White House

1 itself. Ultimately, because of my position here in
2 the office, it was judged not to jump the chain of
3 command. There's a larger process that needed to
4 take place.

5 So whether or not that could be
6 explored again, my understanding is that that plan,
7 potentially public-private partnership, which again
8 would be perfect for what American Water, what
9 we're talking about here is, I think it could be
10 explored.

11 **Q. So you think more public-private**
12 **partnerships could be explored for lead service**
13 **lines?**

14 A. Yes.

15 **Q. Commissioner Kenney had asked you a**
16 **question, and he asked me the same question. Both**
17 **struggled with it. Can you explain why you think**
18 **you struggled with it?**

19 A. I struggled with it because of all of
20 the issues that I raised beforehand. We're
21 presupposing that this is the best use of ratepayer
22 dollars in moving forward and that we're not going
23 to go ahead and cause more harm than we otherwise
24 would by not doing this process.

25 Right now it's not entirely clear to

1 me that we are. I don't want to be in a position
2 where ten years from now we're digging up holes
3 again because we didn't record the stuff right the
4 first time, or that we passed over something
5 because we didn't have a plan in place over homes
6 that are vacant today.

7 These are just very simple questions
8 that it shouldn't -- it shouldn't come to this
9 point a year later where we're still struggling
10 with it.

11 **Q. Who are the relevant stakeholders**
12 **that you think could help create an objective**
13 **answer?**

14 A. I had a very meaningful discussion
15 with the state's epidemiologist, and I think we
16 even included reference to OSHA laws. Her point to
17 that, and she's the one that brought that to my
18 attention, was that it's not just a matter of
19 removing that lead line. It's a hazardous
20 material.

21 If you're breaking it off -- and
22 we've got a DR response where we asked for
23 different excavation methods. How does the company
24 remove the line? There's a lot of different ways
25 you can remove the line, including a hacksaw. If

1 you're using a hacksaw, there's -- your lead's
2 getting everywhere. If you're using a pipe cutter,
3 it's going to be a cleaner cut.

4 Obviously it's going to vary between
5 sites, but the problem from an epidemiologist, from
6 Health and Human Services' perspective is that
7 essentially you're getting lead into the soil.
8 Based off of my discussions with experts in this
9 field, the two largest factors, overwhelmingly the
10 largest factors for lead exposure for children or
11 pregnant women, which is really who we should be
12 focusing on, is lead paint and lead in the soil.

13 I think we have a lot to learn. I
14 think there's -- HUD went through this experience
15 back in the '80s. HUD decided that they were going
16 to go ahead and remove all the lead paint out of
17 all of their own homes, government-owned homes.
18 Essentially that practice was stopped because it
19 became cost prohibitive and because they were
20 making things worse. By messing with the paint,
21 they were essentially getting it everywhere. They
22 were getting these finite particles everywhere.

23 To suggest that this is above
24 reproach, that we shouldn't have some measured
25 questions just seems inappropriate.

1 **Q. There was some discussion with the**
2 **Bench about Indiana. Are you aware of any other**
3 **states' approach to this issue?**

4 A. Wisconsin has passed a statute for
5 municipals. Michigan is still struggling with
6 this. We are several years removed from Flint.
7 There's information that you can glean from that.
8 In Pennsylvania, York, who's in violation of lead
9 and copper rule, is not getting a return on and of
10 that investment and is footing some of the bill for
11 those lead replacements. Again, it's a very local
12 phenomenon. They were in violations, what took
13 place.

14 In the AAO case I referenced Madison,
15 Wisconsin. Madison, Wisconsin was unique to me
16 because that was a company that was very -- a city
17 that was proactive in taking out lead lines.
18 Several years later they found elevated levels of
19 lead again.

20 I mean, at the heart of it, I think
21 most people would agree the lead and copper rule is
22 flawed by itself, that it's an imperfect
23 measurement tool to move forward. But right now,
24 there is no -- there is -- the company is not in
25 violation, and there's nobody telling the utility

1 that these need to be removed. In fact, 15 years
2 ago the very same company argued in front of
3 federal courts to be abdicated this responsibility.
4 American Waterworks is a larger entity within that
5 conglomerate.

6 **Q. Are you aware of any commission who**
7 **has approved a project like this?**

8 A. No. It would be unprecedented, and
9 certainly one that for lack of the information to
10 substantiate it.

11 **Q. I think the Commission had asked you**
12 **about some reporting requirements. I know you've**
13 **had a very little bit of time, but are there**
14 **anything else you would add to that?**

15 A. I think it's imperative that we have
16 a dialog. I think that's the thing that's missing
17 at best here. I've tried to raise issues and
18 concerns through testimony and to the extent of
19 sort of abridged one offs here in the confines of a
20 regulatory hearing, but this isn't probably the
21 best way to handle this. Yes, there should be
22 other actors involved that don't know about this.

23 **Q. Who would those other actors be?**

24 A. I would refer back to the Lead
25 Service Replacement Collaborative, which is really

1 where we modeled every point in our pilot program
2 is based off of best practices, which basically
3 essentially engage stakeholders early on in this
4 process, get buy in and prioritize.

5 I don't think that has happened
6 today. Instead, we've got a 250-word application
7 in the AAO case and very, very, very little
8 testimony in this case.

9 **Q. That Lead Service Line Replacement**
10 **Collaborative, is that the same collaborative that**
11 **Mr. Naumick had referred to?**

12 A. Mr. Naumick, yes.

13 **Q. And what is the Lead Service Line**
14 **Replacement Collaborative?**

15 A. So the Lead Service Line
16 Collaborative is essentially that. It is a
17 collaborative of interested entities about this on
18 a macro scale. Essentially what we would be
19 talking about is implementing something like this
20 on a Missouri-specific level, which is what the
21 collaborative advocates.

22 **Q. Counsel for the company had asked you**
23 **about privatization. Can you put -- kind of put**
24 **some context around that statement that you made in**
25 **your testimony?**

1 A. In -- I would say OPC is indifferent
2 to privatization. I mean, we're not saying we're
3 for it or against it. We're making an observation
4 that moving towards single-tariff pricing, moving
5 towards socializing lead service line replacements
6 and the associated fear with that, the two of those
7 factors would have an overwhelming impact on not
8 only just distressed systems but the greater,
9 broader public dialog I think over lead
10 replacement.

11 Our -- I said this in the AAO case,
12 but I think St. Louis would be the next -- the City
13 of St. Louis would be a prime candidate at that
14 point to go ahead and be absorbed by American
15 Water. And again, that might be the best case.
16 But the fact that we're not talking about that,
17 we're sort of collectively pretending like that's
18 not an option, I think is discouraging.

19 **Q. Why is it discouraging?**

20 A. Because when we say \$1 million or
21 \$1.4 million that was spent in fiscal year or
22 calendar year 2017, I think that minimizes the
23 impact that we're talking about here. And I put in
24 numbers that if we were to just go off of the lead
25 lines in the state, the estimated lead lines, we

1 would essentially be talking about and the
2 company's numbers there would be several billion
3 dollars. That's orders of magnitude greater than
4 what their rate base is today. This would be huge.
5 That's just the lead lines. That doesn't include
6 what their -- what the capital cost of their
7 associated systems would be as well.

8 **Q. So you're saying acquisition growth**
9 **could impact this issue?**

10 A. I think it -- I mean, if I was the
11 company, I would absolutely be in favor of this. I
12 mean, it puts them in a very, very attractive
13 position.

14 **Q. And so when you were talking about**
15 **privatization, you were talking about the larger**
16 **public systems, correct?**

17 A. Primarily, yes. To Mr. Cooper's
18 point, yes, there's hundreds of small water
19 systems, but they pale in comparison to the
20 St. Louis, the Kansas City, the Springfield, those
21 sort of entities.

22 **Q. I think Staff asked you a question**
23 **about whether the only thing that Missouri-American**
24 **Water can control is lead pipes, something to that**
25 **effect. And you asked if he could clarify your**

1 **response. Do you recall that?**

2 A. I do. The response, and I think I
3 answered it earlier, but it really did have to
4 go -- refer to potentially contaminating the soil
5 with that excavation.

6 I'm by no means an expert on this,
7 but my cursory understanding with OSHA regulations
8 is that precautions need to be made for those
9 workers that are handling hazardous material, and
10 there's also the issue of what you're doing with
11 that material after the fact, where are you going
12 to dispose of it, how are you dealing with that.

13 **Q. And the company is treating the**
14 **water, true?**

15 A. They are.

16 **Q. And how does that impact the pipes?**

17 A. They're in compliance with the lead
18 and copper rule. My understanding is the company
19 does a very, very good job of their job.

20 **Q. There was also reference by Staff**
21 **counsel relating to Flint, Michigan. Could you**
22 **provide some context about what happened in Flint**
23 **beyond what was explored through cross?**

24 A. Yeah. You know, I mean, Flint, there
25 were a variety of things that happened in Flint

1 that I don't think are -- it's not an apples to
2 apples comparison. It's more of an apples to milk
3 comparison or meat. It's something completely
4 different with what took place in Flint, and it was
5 a systemic issue.

6 But to the issue of lead lines,
7 there's essentially two ways of judging whether
8 there's lead present. There's the water lead
9 levels, is there lead in the water, and is there
10 the blood lead levels. Right? And we're still
11 gathering knowledge. Like any discipline, I think
12 all disciplines reserve the right to get better,
13 and in part that's why we advocated for, you know,
14 encouraging different universities to be a part of
15 this research, really just an opportunity.

16 But my testimony included, you know,
17 empirical data to support essentially not only what
18 took place in Flint, not only what took place in
19 that county, not only what took place in Michigan
20 during that time, but also other states.

21 **Q. And I believe counsel for Staff also**
22 **specifically pointed to a part of the transcript**
23 **where -- or I guess you contacted Flint, Michigan**
24 **or officials in the county to verify what it is**
25 **that you were observing in the data. Do you recall**

1 **that?**

2 A. I do.

3 **Q. And why did you do that?**

4 A. I did it because I couldn't believe
5 what I saw. Based off of the press, everything
6 that I saw about Flint, Michigan, I expected to see
7 I guess what I expected to see, I mean, just huge
8 elevated spikes, a tragedy. And what the blood
9 lead levels showed was that they weren't there. To
10 the extent that there was a bump, the bump was
11 consistent with CDC recommendations to keep an eye
12 on them, but not to actually do anything or not to
13 actually do any measures.

14 I can confidently say, you know, that
15 if you're of a certain age in this room, you were
16 probably exposed to much more lead in your
17 developmental years than anybody, any child was in
18 the Flint area just because of the leaded gasoline
19 that was present, was being pumped.

20 I mean, we talk about the lead
21 tragedy or the lead crisis. I think it's a little
22 misplaced. What we've done as far as eradicating
23 lead in this country is nothing short of amazing.

24 **Q. How did Flint at the time of them**
25 **using the Flint River water as opposed to the Lake**

1 **Huron water, how did that -- during that time**
2 **period, how did Flint compare to the rest of the**
3 **state of Michigan?**

4 A. The Flint water quality or the
5 Flint --

6 **Q. Either/or.**

7 A. I mean, all of Michigan, you know,
8 experienced a crisis in terms of both the housing
9 and associated impact with the automobile industry
10 in Flint. It's well document the sort of struggles
11 they've gone, and it was essentially a cost-cutting
12 measure to go ahead and use water from Flint River
13 as opposed to getting water from Detroit or from
14 the lakes.

15 The biggest factor with that, I mean,
16 there were a couple of different factors, but
17 essentially they just didn't have the money, and --

18 **Q. And how did the blood levels compare?**

19 MR. WESTEN: I'm sorry. I'm going to
20 just object. I think actually --

21 JUDGE BURTON: I'm going to sustain
22 that.

23 MR. WESTEN: -- previously put in the
24 record either by Mr. Marke himself in the direct
25 testimony or by other witnesses.

1 JUDGE BURTON: Let's move it along.

2 MR. SMITH: I have no further
3 questions. Thank you.

4 JUDGE BURTON: That being said, I
5 believe we have two more witnesses who will be
6 addressing this issue who will be appearing either
7 tomorrow or Thursday. So that should conclude the
8 testimony on the lead service line, which is the
9 only issue we have left scheduled for today.

10 I did see that we have a copy of the
11 Stipulation & Agreement that was filed in EFIS,
12 electronic filing information system for the
13 Commission, concerning the issues that we had
14 discussed, and that was also including the sewer
15 rate design settlement tariff proposal.

16 We'll have the Commission review that
17 and we can discuss after we go off the record when
18 the parties would like to make any presentations
19 that they feel is necessary on those issues.

20 Is there anything else that we need
21 to address before we adjourn for the day and
22 continue tomorrow at 8:30?

23 MR. WESTEN: Nothing from Staff.

24 JUDGE BURTON: Thank you, everyone.
25 We will go ahead and end today's testimony. Thank

1 you.

2 (WHEREUPON, the evidentiary hearing
3 was recessed at 10:30 a.m.)

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