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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Rulemaking Hearing
August 7, 2018
Jefferson City, Missouri
Volume 1

In The Matter Of A Proposed)
Rule Regarding Incentives For) File No. AX-2018-0240
Acquisition of Nonviable)
Utilities)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
COMMISSIONER

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P R O C E E D I N G S

JUDGE WOODRUFF: Let's go ahead and get started. We're here for a rulemaking hearing. This is Commission File AX-2018-0240. It's concerning the proposed rule for 4 CSR 240-10.085 which are Incentives for Acquisition of Nonviable Utilities.

The Commission has published this proposed rule in the Missouri Register, and the rulemaking hearing was properly set for today at 10:00 a.m. This is a rulemaking hearing, not a contested case hearing. Therefore, it's much more informal than the rulemaking hearing. I'm not going to take entries of appearance from anybody. Nobody is going to be sworn to give testimony.

We're just taking comments. Really the only structure we have for it is that I'll ask members of the public to speak. You can speak from where you're at if you're in the front row. If you're in the back, I ask you to come forward to the podium just so that you can be seen, and I'll let you give your -- speak your peace. I may have some questions. I'm expecting Chairman Hall to be here later. He may have some questions for you after you've given your statement.

I'll ask staff to go last so that they have a chance to respond to the other comments. So with that,
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1 then we're ready to begin taking comments. Who would
2 like to go first?

3 MR. COOPER: Do you want to go ahead, Ryan?

4 MR. SMITH: Sure.

5 JUDGE WOODRUFF: If you'd identify yourself
6 for the benefit of the court reporter.

7 MR. SMITH: I will, sure. Ryan Smith for
8 Office of the Public Counsel. I'm Senior Counsel here.
9 I'm also joined at the table with Caleb Hall. He's also
10 with the Office of the Public Counsel.

11 I wanted to start my comments thanking the
12 Commission for their efforts to create a rule
13 essentially designed to encourage healthy utilities to
14 try to acquire small distressed utilities.

15 I think that's a good goal, but public counsel
16 does have some concerns with this particular rule and
17 the way in which that goal is trying to be achieved. So
18 public counsel has filed some comments which have
19 detailed our concerns, but today I'd like to highlight
20 three strong priorities.

21 The first one concerns the size of the systems
22 to be acquired. The second concerns the scope of a rate
23 of return premium and a debit acquisition adjustment.
24 The third concerns the legal authority.

25 With the first, there's a problem with the
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1 size of the systems to be acquired. 393.146, the
2 statute upon which this rule relies as its authority,
3 states acquisition of small water or sewer corporations
4 by capable public utilities. Proposed rule only refers
5 to nonviable utilities.

6 Public counsel's critique is that nonviable
7 should be limited to small utilities. Public counsel
8 believes the Commission's intent was really only for
9 small utilities that this rule be applied to. The way
10 this rule is currently structured Missouri-American
11 could acquire large municipal systems like Columbia or
12 St. Louis or Kansas City and come to the Commission and
13 request a rate of return premium or a debit acquisition
14 adjustment per these colossal acquisitions.

15 Public counsel does not believe the Commission
16 means to grant to Missouri-American or another large
17 utility the ability to request these types of
18 incentives. So that's our first comment.

19 CHAIRMAN HALL: Well, let me stop you there.

20 MR. SMITH: Sure.

21 CHAIRMAN HALL: So what change are you
22 recommending to the rule and where?

23 MR. SMITH: Well, so, we would recommend that
24 non -- one way you could do it is just have nonviable
25 defined. It has a definition already. But you could

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1 just line it up in sync with 393.146 and state that
2 nonviable shall mean for purposes of this rule, you
3 know, only a small water or sewer utility.

4 CHAIRMAN HALL: And that would be --

5 MR. SMITH: So it's defined in the rule as
6 8,000 customers or less.

7 CHAIRMAN HALL: You mean in the statute?

8 MR. SMITH: In the statute. I do mean that.
9 Thank you, Chairman.

10 CHAIRMAN HALL: So you recommend that where we
11 say nonviable utility we should say small water
12 corporation as defined in 393.146? That's your
13 recommended?

14 MR. SMITH: Yes, yes, and sewer. I think it
15 would be appropriate to also apply to a sewer
16 corporation.

17 CHAIRMAN HALL: You're really open to it being
18 a system that large?

19 MR. SMITH: Well, I think the statute says
20 small, a small system and defines it in such a way
21 that's less than 8,000. Our preference, of course,
22 would be 1,000 or less upon which there's different
23 statutory authority referring to a lone system that
24 could be administered between EIERA, which is an
25 acronym, but I can't remember exactly what it stands for
Page

1 in the Commission, and that there is some suggestion
2 that perhaps this type of mechanism could apply to
3 1,000, but I think there is support in the statute for
4 8,000 or less. So we don't think that would be --

5 CHAIRMAN HALL: And would that still be your
6 preference even if we were to eliminate the reference to
7 393.146 as the statutory authority for the rule? That's
8 going to be one of my questions for staff. It doesn't
9 seem to me that that statute is the correct statute to
10 provide authority here; that it's the more general
11 statutes that are appropriate.

12 If we were to delete 393.146 as the enabling
13 statute, do you still think that we should take the
14 definition of small water corporation from that statute?

15 MR. SMITH: Well, one of our -- I want to
16 directly address your question. Before I do, I do want
17 to say that our third point is that we question whether
18 there would be legal authority for this.

19 CHAIRMAN HALL: You question it under 393.146.
20 You don't question it under any of our more general
21 statutes which we specifically list as authority as well
22 or if you do, I missed it.

23 MR. SMITH: Well, I think we would question it
24 under those as well.

25 CHAIRMAN HALL: Why?
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1 MR. SMITH: Well, more from a practical like
2 more from a necessity argument.

3 CHAIRMAN HALL: Yeah, I'm not interested in
4 that. I'm interested in whether legally what your legal
5 argument is for why those general statutory powers of
6 the Commission don't provide us rulemaking authority
7 here and if you don't have an argument there, that's
8 fine.

9 MR. SMITH: I mean, I think the argument would
10 be more from an accounting perspective that, for
11 example, a debit acquisition adjustment, one of our
12 comments is I think the Commission wants to -- or wants
13 to have the authority to award to a company an amount
14 that the assets might not actually reflect.

15 CHAIRMAN HALL: Let's move back to my original
16 question.

17 MR. HALL: Mr. Chairman, if possibly I could
18 address your question. I think there might be potential
19 conflict where if the Commission so chooses to adopt a
20 rule, not referencing 393.146 but having an acquisition
21 of nonviable utilities that applies to both small and
22 large water corporations, you're going to have potential
23 conflict with the statute that's specifically addressing
24 these small water utilities.

25 CHAIRMAN HALL: No, no, that's silly. Okay.
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1 Moving on to my original question, which is if we do
2 delete reference to 393.146 as the authority for the
3 rule, do you still think that we should cite 393.146
4 definition of small water corporation as one of the
5 components of a nonviable utility or should we just --
6 because I think -- I mean, I think you raised a pretty
7 good point that we're not intending this to cover the
8 acquisition of a 30,000 customer system. I agree with
9 you on that.

10 So I'm looking for if we wanted to narrow it
11 to the smaller systems, and we delete reference to
12 393.146, should we just come up with a number. It's
13 systems under something.

14 MR. SMITH: I think that would make sense.

15 CHAIRMAN HALL: And if we did that, what
16 number would that be from OPC's perspective? Is it
17 1,000? Is that what you said?

18 MR. SMITH: Yeah, I think the statute has
19 provided 8,000 or 1,000. There are statutes referencing
20 each of those, and so we think either of those would
21 have a basis in the statute.

22 CHAIRMAN HALL: Okay. All right.
23 Thank you.

24 MR. SMITH: Okay. So the second comment we
25 had are the scope of the rate of return premiums and
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1 debit acquisition adjustments. Both Liberty Water and
2 Missouri-American Water argue in their comments that the
3 rate of return premiums should apply to the entirety of
4 the company's rate base, not just the portion of the
5 rate base for the acquired system. And a utility can
6 dream but in the reality of the regulatory world I don't
7 think that that's the right result, first of all.

8 I don't think that's what justice -- I don't
9 think that would be a just result. And again, citing
10 the 393.146, I think that would be specifically
11 inconsistent with that statute. The same is true of
12 debit acquisition adjustments. We don't believe that
13 there should be a rate of return on the debit
14 acquisition adjustment. Maybe 393.146 you could read
15 that there maybe could be a return of, an argument for
16 that, but we don't think there should be a rate of
17 return premium on top of the debit acquisition
18 adjustment. So that the second comment really concerns
19 the scope and is responsive to Missouri-American and
20 Liberty Water's argument that the scope should be much
21 broader than OPC thinks the Commission intended.

22 The third and final comment has to do with the
23 legal authority for this rule. And I think we've
24 discussed that. Our comment is comment 21 related to
25 that.

1 CHAIRMAN HALL: And how does that argument --
2 If we were to delete reference to 393.146, how does that
3 argument change?

4 MR. SMITH: I think my colleague Caleb Hall
5 did point out a good point that if you have a statute
6 which is talking about those instances in which a rate
7 of return premium would be appropriate and it is
8 specifically talking about the kind of a situation where
9 that would be appropriate, but then a rule is
10 promulgated promoting a situation other than what that
11 statute provided, that could potentially be a conflict.

12 CHAIRMAN HALL: Yeah. And I think that's
13 again I'll say silly because you make the point in your
14 filing that we're talking about two very different
15 scenarios here.

16 MR. SMITH: I agree.

17 CHAIRMAN HALL: It seems to me you're talking
18 out of both sides of your mouth then. We're talking
19 about very different situations and very different
20 mechanisms. Now, you're right, it is to deal with the
21 same problem but it's two dramatically different
22 mechanisms. One is a forced acquisition. One is a
23 voluntary acquisition.

24 MR. SMITH: I agree with that.

25 CHAIRMAN HALL: Okay. Your second point, I

1 guess you call it a scope?

2 MR. SMITH: Yes.

3 CHAIRMAN HALL: My understanding is that
4 Missouri-American and Liberty and staff and OPC all
5 identified an ambiguity -- maybe OPC didn't as much as
6 the other three -- identified an ambiguity that under
7 the draft rule does the rate of return apply just to the
8 acquired assets or does it apply to the entire rate base
9 for the acquiring utility, right?

10 MR. SMITH: Right.

11 CHAIRMAN HALL: Okay. And staff is
12 recommending that we explicitly limit it to the acquired
13 system. And you agree with staff on that --

14 MR. SMITH: Yes.

15 CHAIRMAN HALL: -- point. Okay. Okay. Thank
16 you.

17 MR. SMITH: Sure.

18 JUDGE WOODRUFF: Anything else, Mr. Smith?

19 MR. SMITH: Nothing.

20 JUDGE WOODRUFF: Anyone else wishing to
21 comment?

22 MR. COOPER: Yes, Your Honor. Ms. Cheryl
23 Norton, President of Missouri-American Water Company,
24 will provide some comments on behalf of the company.

25 JUDGE WOODRUFF: If you could identify

1 yourself for the record as well.

2 MR. COOPER: My name is Dean Cooper, attorney
3 appearing for Missouri-American.

4 MS. NORTON: Thank you, Judge. Chairman Hall
5 and Judge Woodruff, we're here today to just -- First of
6 all, we want to say thank you for bringing this rule
7 forward. We think that it's a really great effort by
8 the Commission to try to help solve some of the water
9 and sewer issues that we see across the state of
10 Missouri. It's a nationwide issue that there are a lot
11 of small systems and medium-sized systems that are
12 really struggling to perform and to provide good clean
13 safe water and so we really acknowledge the fact that
14 you're trying to make a difference here and we
15 appreciate that.

16 Over the years we've acquired some systems
17 that you would have considered nonviable or troubled
18 systems, and we've been able to do that because we have
19 expertise and we have the operational knowledge to be
20 able to go in and fix it and be able to make the
21 investments that they need to get those systems back
22 online and where they need to be. We've also passed on
23 several systems and some systems that have been brought
24 to our attention by the Public Service Commission, by
25 the OPC, and sometimes we just can't justify taking on

1 those systems because it doesn't make sense for our
2 business or for our customers. We want to make sure
3 that we're balancing both of those things as we look at
4 these systems. So sometimes there's just not enough
5 incentive for us to take on those troubled systems and
6 so we can't help in those communities.

7 So we think that because of that and because
8 of those issues that this is a great time to have this
9 conversation about what we can do to make this more
10 available to customers all across the state of Missouri.
11 And so today I'd like --

12 CHAIRMAN HALL: I'm sorry. Can I interrupt
13 for a second? Because you raised a point that I really
14 have some questions about and that is you noted that
15 Missouri-American has made a number of acquisitions but
16 then it's also decided to not do certain acquisitions?

17 MS. NORTON: Correct.

18 CHAIRMAN HALL: And under the proposed rule we
19 say that this incentive applies only in situations where
20 you can prove that but for this incentive you wouldn't
21 do the purchase.

22 MS. NORTON: Uh-huh.

23 CHAIRMAN HALL: How hard is that going to be
24 to prove? When you've got the system over here that you
25 acquire and then the one over here that you do not --

1 MS. NORTON: Right.

2 CHAIRMAN HALL: -- is it just a simple
3 accounting where you can just -- I mean, how would you
4 prove that?

5 MS. NORTON: It would be very challenging to
6 prove it. Okay. So typically the kind of systems that
7 we take over and that we consider fairly quickly would
8 be systems that are very close to our current systems.
9 So kind of within our footprint. The systems that get
10 to be 45 minutes to an hour farther from our system we
11 take a much closer look at and really kind of try to
12 consider does that make sense for us because you've got
13 to have staff to go and no matter how many customers you
14 have there you want to take care of them. If they call,
15 you want to be there that day. You don't want to make
16 them wait two or three days until you're going to be in
17 the area. We look at that distance.

18 We also look at the needs of that community,
19 the kinds of capital investments that they need, the
20 rate structure. There are many, many factors that we
21 look at before we decide, you know. We also may take on
22 a small system if we think there's other growth
23 opportunities in that area. So there's many, many
24 factors that go into that. I think it would be really
25 hard to prove that we would or would not take one on.

1 CHAIRMAN HALL: Well, I'm struggling because
2 you say there are some that you acquire and some that
3 you don't and then -- but that the existence -- but that
4 you appreciate our willingness to consider incentives
5 because those incentives might encourage you to make
6 those purchases.

7 MS. NORTON: Uh-huh.

8 CHAIRMAN HALL: So somebody -- There's a bean
9 counter somewhere --

10 MR. JENKINS: That would be Jim Jenkins.

11 CHAIRMAN HALL: Okay. I'm aware of his bean
12 counting. Okay. If you could try to explain how it is
13 that this type of incentive might encourage you to
14 acquire a system that you might not otherwise.

15 MR. JENKINS: My name is Jim Jenkins, and I
16 work for American Waterworks. And to respond to your
17 question, Chairman, in bean counter world it is tough.
18 One of the things that was really appealing to us and
19 it's reflected in our comments is what we're talking
20 about here are nonviable systems and we're talking about
21 customers that quite frankly are in peril.

22 I mean, Cheryl sees it, and I'm sure the
23 Commission sees it, and I'm sure public counsel sees it.
24 You can get technical people here arguing all around
25 these issues. I think one of the appealing things that

1 you've got in this rule is let's just define what
2 nonviable is. Our recommendation is that only one of
3 those kind of standards hits as nonviable and then we
4 can move forward to whatever the Commission or this rule
5 decides with respect to incentives and we can make our
6 arguments in that type of framework. Does that help
7 first and I'll be glad to keep going.

8 CHAIRMAN HALL: I'm interested in my question
9 as to how you would prove or attempt to prove that but
10 for this incentive the acquisition would not take place.
11 But putting that question on hold just for a second, you
12 referenced another issue that I had a question on. And
13 I think your -- I think that Missouri-American is
14 proposing another or between 1 and 2 of the definition
15 of nonviable and I guess maybe I need to go back to --

16 MR. JENKINS: We're recommending in all the
17 places.

18 CHAIRMAN HALL: I think that was the intent
19 here. You've got 1, 2, 3 or 4. So I think that means
20 any of those would apply.

21 MR. JENKINS: That's what we wanted to be
22 clear.

23 MS. NORTON: That's what we thought. We
24 wanted to be clear.

25 CHAIRMAN HALL: We're clear on that. Maybe I

1 have to call my third grade teacher and have her verify
2 that.

3 MR. JENKINS: My third grade teacher got on to
4 me about my writing skills. Don't call her.

5 CHAIRMAN HALL: How would a bean counter prove
6 that but for this incentive --

7 MR. JENKINS: Right.

8 CHAIRMAN HALL: -- the acquisition would not
9 take place? That is an issue that we really, really
10 struggled with here because we did not want -- you guys
11 are acquiring, what, two, three, four systems a year,
12 something like that? We don't want each of those
13 acquisitions coming in with one of these requests for
14 this incentive, and so we're trying to figure out how to
15 apply this mechanism in a targeted fashion where it's
16 needed and not have big litigation on every single
17 acquisition.

18 MR. JENKINS: So I think it gets down to
19 defining nonviable. I think you've taken a good stab at
20 that so we don't get into this in every acquisition we
21 make. Out of those two or three that we make, some
22 would fall into this category probably, others would
23 not. That's kind of my first response with that.

24 When we look at trying to get to your first
25 question, you know, is there a recipe bait that would

1 exactly explain, I don't think so. The challenge we
2 have is that these small systems that we run into can
3 just really have some pretty serious operational
4 questions and I know Cheryl and I talk from time to
5 time. Some of these companies that when you step into a
6 nonviable system is just many questions to try to
7 address and customers at peril that you've got to
8 address and maybe certain piece of equipment is not
9 working. Our expertise we can fix it, but it's a lot of
10 effort. So then we take a look at in terms of stepping
11 into that to those challenges for the greater public
12 interest is is we would look at these incentives.

13 So this equity, the rate of return type
14 premium is clearly incentive that we would favor. And
15 when you look at it in terms of bean counting world, if
16 we make a million dollar investment, that incentive
17 really translates to us like \$5,000 if you just limit it
18 on each individual asset deal, if you will. So \$5,000?

19 MS. NORTON: Yeah.

20 MR. JENKINS: \$5,000. So that's what we
21 wrestle with is that enough of incentive to step in to
22 those kind of headaches. You can quickly run through
23 that with the kind of experts that we have to help these
24 companies and help the customers out to solve these
25 issues. That's really what we're stepping into with

1 these incentives.

2 CHAIRMAN HALL: I'm not sure I understand the
3 \$5,000. We've got two potential incentives here. One
4 is the rate of return and then the other is the debit
5 acquisition adjustment.

6 MR. JENKINS: Yeah.

7 CHAIRMAN HALL: And the rate of return is
8 limited to 100 points. There is no limit on the debit
9 acquisition adjustment.

10 MR. JENKINS: Yes. And I answered that only
11 with the rate of return. And perhaps for clarity in
12 this rule is it the overall rate of return or is it the
13 return on equity, the equity incentive? The \$5,000 type
14 response is an equity incentive of, you know, kind of on
15 a typical capital structure that runs about 50/50.

16 CHAIRMAN HALL: What I'm hearing you say is
17 that the 100 points isn't enough or it needs to be
18 applied to the entire rate base of the utility, and I
19 understand those arguments but what I'm really getting
20 at is if you had to come -- if we promulgate this rule
21 and you acquire a troubled system and you come in and
22 try to prove that but for the incentive you wouldn't
23 have made the purchase, how do you go about doing that?
24 I mean, is it simply a matter of getting someone up
25 there to say -- someone on the stand to say looking at

1 these numbers without the incentive this is what we
2 would get as a return on the investment and it wouldn't
3 have been enough but with the incentive this is the
4 return we got on the system and that was enough and then
5 let the other parties cross-examine? Is that how that
6 would work? Is there a rule of thumb that
7 Missouri-American has somewhere as to what -- I mean,
8 not a -- I mean, I don't want you to divulge trade
9 secrets or anything.

10 Is there a rule of thumb somewhere as to what
11 kind of return you have to get on the system and I
12 understand that it's different if the system is right
13 next door to your service territory versus across the
14 state. I know that there's differences if the system is
15 in really bad shape or it's in great shape. Is there
16 some kind of rule of thumb there at all or no, there
17 just isn't?

18 MR. COOPER: Chairman, Dean Cooper for
19 Missouri-American. First I was going to say that I
20 think this is a real problem because it's the old
21 proving the negative, how do you prove the negative. I
22 think you're right. I think you would attempt to do it
23 by putting a witness -- providing a witness that would
24 say but for this we wouldn't have done it.

25 But where you go beyond that is pretty tough.

1 I mean, maybe you put it in the contract as a regulatory
2 out and say this deal is -- the contract is no good if
3 we don't get this incentive, but that seems a little
4 harsh in some of these situations because of the time
5 that's going to be involved before you find out whether
6 you're moving forward or not.

7 CHAIRMAN HALL: Frequently the acquisitions
8 are not complete when we do -- when we issue an order on
9 the acquisition case, right?

10 MR. COOPER: Usually the contracts have
11 already been signed and executed but they have a
12 regulatory out that's pending your decision.

13 CHAIRMAN HALL: Right, so that it would be no
14 different. I guess it would -- you'd have that same
15 regulatory out.

16 MR. COOPER: I guess what I was saying you
17 could have a specific regulatory out that would help you
18 with this, I suppose. Again, I don't know if that's
19 where you want to go with that process either.

20 CHAIRMAN HALL: Well, I mean, actually the
21 problem you're raising is even bigger because the
22 reality is this -- the Commission issuing the order on
23 the transfer case or the CCN case is not necessarily the
24 same Commission that's going to be here at the next rate
25 case. And so you're kind of -- I mean, and we struggled

1 with that in a big bad way in terms of drafting this
2 rule because there's no way around that. That's just
3 the law. Unless you change the law, that's what it is.
4 So we have that problem already.

5 But I mean, getting back to my question, why
6 couldn't Ms. Norton get on the stand, say this amount of
7 return, it wasn't enough for us to do the acquisition,
8 this amount of return, it was enough for us to do the
9 acquisition and then let all the other parties
10 cross-examine? Isn't that how we'd have to do it and is
11 that a problem? Ms. Norton?

12 MS. NORTON: Yeah, I think it would be really
13 challenging to do that because is there a cut and dry
14 rate of return that we look at? No, there's kind of a
15 range, if you will, but it has much more to do with the
16 system itself and all those other factors that go into
17 it in addition to the rate of return. That's only one
18 small piece of whether or not we would try to take on a
19 system because frankly if we're only talking about, you
20 know, 100 customers, 200 customers, the impact to the
21 overall business, that rate of return is so small. As
22 Jim said, if we invest a million dollars, the up side of
23 100 basis points is \$5,000. And I can tell you that in
24 the most recent one that we've taken on that's very
25 troubled, \$5,000 is nothing compared to what it's taking

1 to fix that system and to get it where it needs to be
2 and to make it to where those customers are actually
3 paying for the service that they're getting.

4 MR. SMITH: Could I ask just a clarifying
5 question?

6 CHAIRMAN HALL: Sure.

7 MR. SMITH: Is the \$5,000 number that's being
8 quoted an annual number?

9 MR. JENKINS: Yes. Once it would get
10 reflected in rates, it would be annual and probably work
11 its way down just a little bit as assets were recovered.

12 MR. LaGRAND: Brian LaGrand for
13 Missouri-American Water. I calculated that was just a
14 million dollars. I was doing it on just an ROE premium.
15 If it was rate of return premium, you would apply 100
16 basis points to the million dollars of rate base. So it
17 would be \$10,000 if it's on the entire amount. That's
18 where we came up with that, if that's helpful.

19 MR. JENKINS: To follow up on the question and
20 as a non-attorney and I just think practicality with a
21 rule like this it would be nice once you met the
22 nonviable standard, whether that criteria is nonviable,
23 we've got customers at risk, it would be nice not to
24 rehash why we think something is viable, nonviable, why
25 we would do it or not. In my opinion, just in terms of

1 practicality to shift it from meets the nonviable then
2 these discretionary incentives are available from the
3 Commission and we make our case for them, not the other
4 way around.

5 I just get concerned about spending a lot of
6 time arguing the practicalities of why we step into a
7 deal or not. Certainly I get concerned about the
8 process and having one time about 15 years ago here with
9 an acquisition on a small system having spent a good day
10 on the witness stand, just a lot of resources that I
11 think would maybe water down the rule but wouldn't be
12 effective. That's just a comment.

13 CHAIRMAN HALL: The problem is that you've
14 already identified that you have acquired nonviable
15 systems --

16 MR. JENKINS: Yeah.

17 CHAIRMAN HALL: -- without this incentive. So
18 how do we prevent that request for all purchases of
19 nonviable systems because there could be some where you
20 don't need the incentive. Would it make sense to have
21 some kind of shifting burden of proof where you have to
22 come forward and articulate that but for the incentive
23 you would not consummate the acquisition and provide
24 some kind of prima facie evidence of that and then the
25 burden shifts to other parties to show why it's not true

1 that you would have acquired it regardless? I'm just
2 throwing out a concept.

3 MS. NORTON: Frankly, if it gets so hard to
4 do, and if we're concerned about being able to prove it,
5 the incentive wouldn't be good enough to do it. The
6 real issue that we have with these systems is that
7 period between when we take it on and when we get our
8 next rates in place. Okay? So that period of time is
9 the biggest issue.

10 So if we could remove the lag associated with
11 that instead of doing it the way we currently do, so
12 you're making these investments, you're depreciating
13 your assets, you're doing all those things and so you're
14 taking a fairly good hit for the small system if you do
15 the small systems, this nonviable system. So trying to
16 find ways to reduce that lag between the rate case
17 period is a huge incentive I think for being able to
18 take these on and being able to show that this makes
19 sense.

20 There are probably some small or nonviable
21 systems that we have taken that we've taken for reasons
22 other than any of these things that you're talking
23 about. It's more about these customers deserve to be
24 able to drink the water. We're dealing with one right
25 now that, you know, the staff came to us and said please

1 consider taking this system. I said it's too far away,
2 it's too small, it doesn't make sense for us, but we'll
3 take a look at it because these customers haven't been
4 able to drink their water for years. So we did that.

5 And so none of the things that we're talking
6 about here, that is absolutely a system that under
7 normal circumstances you run the numbers, we're not
8 going to take it, but we took it anyway. So does that
9 mean that that system wouldn't qualify for this because
10 we did it because it was the right thing to do? That's
11 where I struggle with trying to prove it. Does that
12 make sense?

13 CHAIRMAN HALL: Yeah, I understand that. I
14 guess -- I mean, if you're going to take over systems
15 solely out of concern for customers, which I appreciate,
16 and I know staff appreciates and I know OPC appreciates,
17 maybe we don't need this.

18 MS. NORTON: I would beg to differ.

19 CHAIRMAN HALL: That's what we're trying to do
20 is we're trying to find -- trying to come up with a
21 targeted mechanism for those systems that your bean
22 counter over here, who has no social conscience, he said
23 no, Cheryl, you can't do this, our shareholders will
24 kill you. This is -- but with this incentive you can do
25 it. And so we're trying to come up with a mechanism

1 that targets this for that situation.

2 I understand -- I guess we're kind of going in
3 circles now. I understand your concern that you don't
4 want to have to get on the stand and get grilled by OPC
5 and have them come up with the 15 systems that you
6 purchased without this acquisition and have you explain
7 why this one is so much worse. I get that.

8 MS. NORTON: Not for \$5,000. It's not worth
9 that.

10 CHAIRMAN HALL: But of course, the reality is
11 we take out that requirement and keep in the public
12 interest requirement, they're going to do the same thing
13 anyway.

14 MS. NORTON: Uh-huh.

15 CHAIRMAN HALL: So all we're doing in this
16 draft rule is provide a specific criteria to be used
17 when they're grilling you by us when we write our order.
18 I get your concern. And I interrupted you. I think you
19 were on your first point.

20 MS. NORTON: I know. Right? We did cover a
21 few of them, I think. Back to the four different
22 definitions of what's nonviable, I think we're all in
23 agreement on what that should be. We do think that the
24 flexibility towards that ROE incentive is constructive
25 and we would like to, or the ROR, we would like to

1 figure out how that could work and what makes sense but
2 again 100 basis points on a small nonviable system is
3 probably not much of an incentive, to be honest.

4 CHAIRMAN HALL: Let me stop you again for a
5 second and I guess turn to staff. The ROR, that was
6 intended to apply to the entire rate of return, not just
7 the ROE, correct?

8 MR. WESTON: This is Jacob Weston speaking for
9 staff and yes, the intent was to be the rate of return.

10 CHAIRMAN HALL: Is there a reason that needs
11 to be clarified that it's not just ROE or why didn't
12 Missouri-American view it just as ROE?

13 MR. WESTON: You know, I don't see a need for
14 an explicit clarification. I suppose if there is a
15 concern of ambiguity, which I previously had not read
16 into this, we could use our rate of return acronym, the
17 (ROR), to make that absolutely clear. My understanding
18 is that rate of return is always understood to encompass
19 return on equity and cost of debt within a capital
20 structure.

21 CHAIRMAN HALL: That was my understanding as
22 well.

23 MR. JENKINS: Agree. Your question, and I
24 think counsel over there makes a good point, we run into
25 just wanting to make sure it's clear. I think the

1 suggestion about putting return, rate of return, because
2 a lot of people -- even technically you're correct a lot
3 of people take that rate of return and just jump to
4 return on equity. So that was just our point was just
5 making sure that we're clear on that.

6 CHAIRMAN HALL: Okay.

7 MS. NORTON: One of the other concerns that we
8 had with the rule as written when you start talking
9 about the records of those systems, those nonviable
10 systems, we have seen everything from a great record
11 keeping process, to shoe box full of papers, to nothing
12 at all. If you're requiring a study for each of these
13 systems, chances are if they're nonviable there's a
14 really good chance they're not going to have the kinds
15 of records that you would need to provide to do the kind
16 of study that is mentioned in this rule. So we think
17 that would be nearly impossible to be able to complete
18 that kind of study. What we would suggest is that if
19 you don't have the records that you could have an
20 engineering study or an engineering analysis done and
21 use one of the tools that's available through that kind
22 of a process to determine what that value should be,
23 what the asset value should be.

24 CHAIRMAN HALL: Let me stop you again for a
25 second there and turn to staff, because that is actually

1 how I read the draft rule or at least that was my
2 understanding of the intent, but what I'm wondering is
3 where it says shall be furnished, and I'm looking at
4 Liberty's comments because they echoed what
5 Missouri-American's concerns just articulated.

6 Is there a reason why shall be furnished needs
7 to be modified to clarify that if the documents don't
8 exist they don't exist and estimates will be sufficient?

9 MR. WESTON: My answer to that, and again this
10 is Jacob Weston speaking for staff, my answer to that,
11 Chairman, is I don't think shall ought to be modified.
12 I think it is an appropriate command or directive to
13 companies interested in taking advantage of this
14 potential opportunity that if there is a situation where
15 there is no documents, exactly as Ms. Norton just
16 described, the kinds of steps that a company can take to
17 estimate what the appropriate financial value is and
18 then use that documentation to support it is
19 contemplated in this plant in service study.

20 CHAIRMAN HALL: Should we say such records if
21 they exist shall be furnished? Does that --

22 MR. WESTON: Right. So if the items exist,
23 they shall be furnished. If they do not and they do not
24 exist, then the estimates are what are asked for.

25 CHAIRMAN HALL: We may need to clarify that.

1 That's my understanding of the intent, and I think
2 that's reasonable, but I do think that both Liberty and
3 Missouri-American make reasonable -- raise reasonable
4 concerns about possible inconsistency between shall be
5 furnished and then later in the rule allowing estimates.

6 MR. WESTON: And I understand that concern,
7 Chairman, and I think I would just reiterate that I
8 think the rule already contemplates that by identifying
9 that section (B) if any of the items that are required
10 are unavailable, they shall be furnished later and that
11 they shall be furnished later already includes the
12 ability to estimate. I think the rule clearly
13 contemplates that.

14 CHAIRMAN HALL: How does Missouri-American
15 respond to that? Liberty is not here, right?

16 MR. COOPER: Chairman, I think it's still sort
17 of -- Well, we'll start with the shall be furnished. I
18 think that's still cumbersome. Just the sentence
19 itself, if they're unavailable at the time, they shall
20 be furnished later. Well, just may be unavailable and
21 impossible to furnish later. I do think there's some
22 adjustment there that would be helpful just in that
23 sentence.

24 CHAIRMAN HALL: I am going to interrupt. I'm
25 sorry. So Mr. Weston, can you respond to that? I think

1 that is reasonable.

2 MR. WESTON: I understand the concern. And if
3 there was a way to clarify it specifically, then I would
4 suggest that instead of saying they shall be furnished
5 it could be they and/or estimates shall be furnished by
6 acquiring and have the estimates be cited to later on in
7 the rule to identify exactly when we're referring to
8 estimates.

9 CHAIRMAN HALL: I think that makes sense.

10 MR. JENKINS: Jim Jenkins. In having dealt
11 with this, in famous words that's got coined here, bean
12 counter world, resemble that comment, the point is that
13 the records are at times awful. And a reference to
14 allow estimates, you know, it's my experience across the
15 country is entirely appropriate for these kinds of
16 assets being acquired. Certainly parties have the
17 avenue to challenge the estimates, if you will. But I
18 think including that in the rule would really help
19 because the last thing, you know, any of us want to do
20 is try to chase down data that doesn't exist. So thank
21 you.

22 CHAIRMAN HALL: In the staff assisted rate
23 case, we provided -- In the recently promulgated staff
24 assisted rate case, we provided a somewhat modified
25 auditing or accounting standard for small systems.

1 Would that be of any use here?

2 MR. WESTON: Chairman, this -- So I think the
3 staff assisted rate case rule for small systems allows
4 the use of estimates and for staff to make estimates
5 based on the information they have on hand. And I think
6 the rule makes that clear. I don't think it changes
7 specific auditing standards. I'd be very clear about
8 that. But what it does do is it says that estimates are
9 appropriate especially if the information doesn't exist.
10 And I think that this rule very accurately reflects that
11 if the actual documentation doesn't exist, or the seller
12 doesn't have it, it was destroyed or what have you, that
13 estimates -- at least some reasonable basis for the
14 estimate is acceptable to support the estimate.

15 CHAIRMAN HALL: Okay.

16 MS. NORTON: Chairman, we still find it
17 confusing about the study where it's mentioned first in
18 the rule and then where it talks about the plant in
19 service study. We still feel that clarification would
20 be helpful if it's the same thing or if it's two
21 separate things.

22 CHAIRMAN HALL: So where would you like the
23 further clarification?

24 MR. COOPER: So in, let's see, I guess it's
25 3(C), which I think is where our last discussion was

1 kind of circling around which was ways to show that the
2 estimates are valid or appropriate and then when we go
3 back to (6), there's a specific requirement to file a
4 plant in service study that's referenced in that way I
5 guess maybe three times in that section. And so I don't
6 know -- I think the question that's arising is that
7 later plant in service study to be filed with the rate
8 case, is that just a rehashing of what was used to
9 support the estimates or is that something new and
10 different and it calls for sort of a specialized
11 potentially expensive study that would add to the cost.

12 CHAIRMAN HALL: Let me turn to staff on the
13 filing requirements (3)(C). What is the purpose of that
14 first sentence?

15 MR. WESTON: The purpose of that first
16 sentence is to show and to not make it -- The purpose of
17 the first sentence is not to allow a crunch. The
18 company that's making the acquisition that's interested
19 in doing this we think has the ability to provide some
20 kind of estimate, some kind of analysis of what the
21 value is. Value of the rate base is important because
22 that's what helps establish rates. It's also what helps
23 establish what the actual acquisition incentive is
24 that's being requested. And we understand that exactly
25 -- Staff is very aware of the scenarios where some small

1 nonviable systems have no documentation and that can't
2 always be a basis to say well, we just don't know so
3 let's just agree that it's a certain number. We still
4 need to see some basis for what the value is. And so
5 particularly in a subsequent rate case where the owning
6 -- the new buyer has had time to actually operate those
7 assets, actually is familiar with what they are, has had
8 the opportunity to interact with them and have work done
9 on them, they'll have a greater sense of what's actually
10 there at the time that a rate case actually occurs and
11 has more of a knowledge and fact basis to make those
12 estimates that are being sought to actually determine
13 what the rate base valuation is and therefore what an
14 appropriate acquisition incentive could be if so decided
15 by the Commission.

16 MR. HALL: If I might.

17 CHAIRMAN HALL: Can't we accomplish all that
18 by deleting the first sentence?

19 MR. WESTON: I'm sorry?

20 CHAIRMAN HALL: Can't we accomplish all that
21 by deleting the first sentence and simply just relying
22 on the second sentence that any information not
23 available from the seller shall be estimated?

24 I agree with you that we don't want the
25 company to come in here and say we couldn't get it, no

1 idea. But don't we address that concern with the second
2 sentence?

3 MR. WESTON: I think tentatively, yes, the
4 second sentence is meant to explain that first sentence
5 and explain why the need for estimations is there. I
6 think that by deleting the first sentence it will leave
7 it squarely in whichever future Commission is making the
8 determination to decide if they believe the estimates
9 and the support for them are appropriate, which I think
10 is already the case.

11 CHAIRMAN HALL: And then the -- How do you
12 respond to the second concern raised by Mr. Cooper on --
13 I guess it's on (6)?

14 MR. WESTON: This is the plant in service
15 study question?

16 CHAIRMAN HALL: Yes.

17 MR. WESTON: So staff's view is that the
18 information needed for the plant in service study is the
19 same information that's being provided at the time of
20 the application. It's just that at the time of this
21 subsequent rate case that plant in service study, it has
22 all that information spelled out and explains exactly
23 what we are trying to establish here, what is the value
24 of rate base, what is actually in the ground, what is
25 the CIAC, all of those aspects of that determination.

1 It allows for the applying utility that may not have
 2 that information at the time of the actual application
 3 again that time in between to get the information and
 4 make its own investigation and findings and then provide
 5 documents to support any estimates it has.

6 CHAIRMAN HALL: So would Missouri-American
 7 respond to that?

8 MR. COOPER: Well, I guess it probably just
 9 asks for clarification essentially, because I think what
 10 Mr. Weston said was is that what they contemplate is the
 11 same information that was available at the time of the
 12 application but it's maybe taking that information and
 13 it's kind of coming forward with sort of the summary I
 14 guess, how the CIAC, the plant in service, the so on and
 15 so forth, all translates into rate base come rate case
 16 time. If that's all that that plant in service study is
 17 supposed to be, I think that a little bit of
 18 clarification would be helpful because I think when the
 19 water company folks hear plant in service study, I
 20 believe they think about something different than what
 21 was described there.

22 CHAIRMAN HALL: Okay.

23 MS. NORTON: Agreed.

24 CHAIRMAN HALL: Which gets to, and maybe it's
 25 next issue on your list, I'm not sure, but on page 3 of

1 your comments Missouri-American indicates that it would
2 prefer that the plant in service study take place at the
3 time of acquisition rather than leaving it to the rate
4 case.

5 MS. NORTON: Yes.

6 CHAIRMAN HALL: What's staff's response to
7 that? And then I'd like OPC to respond to that as well.

8 MR. WESTON: Chairman, I think our response is
9 very similar to my earlier response. The idea of
10 delaying a plant in service study as defined in the
11 regulation until the time of the rate case is to give
12 the applying utility time enough to actually work with
13 the assets, to actually do any investigation or
14 engineering review that it needs to to be able to
15 provide that information concisely and fully and
16 thoroughly at the rate case to establish rate base so we
17 know what kind of acquisition we're talking about at
18 that time.

19 If the company is able to provide it at the
20 time of the application and do it all up front, I don't
21 see why that wouldn't be a problem.

22 CHAIRMAN HALL: Well, then maybe we need to
23 make it clear that that is an option.

24 MS. NORTON: Typically our due diligence would
25 uncover -- we would know what we were getting for the

1 most part --

2 CHAIRMAN HALL: I would hope so.

3 MS. NORTON: -- and be able to do that. If
4 there was anything that we discovered after the fact, we
5 would disclose that during a rate case anyway. For the
6 most part, we would know what we were getting.

7 CHAIRMAN HALL: Maybe we need to clarify that
8 if it is possible for the company to do this analysis at
9 the time of acquisition, then it should do so. If it
10 can't because it doesn't have the information it needs,
11 it could be done before the next rate case.

12 MR. WESTON: Chairman, if I might. I think
13 that's an appropriate fix. I think the concern with
14 requiring it at the time of the application is that
15 there might be other utilities that want to take
16 advantage of this that by all means should take
17 advantage of this rule if they do it right and the
18 Commission decides that it's appropriate for them to do
19 so, which may not have the resources or the ability that
20 Missouri-American has. And so by requiring it at that
21 point in time you might limit some of those.

22 CHAIRMAN HALL: I totally agree with that.
23 Does OPC have thoughts on that?

24 MR. SMITH: Yeah, we had commented, for
25 example, on our item No. 12. We share

1 Missouri-American's thoughts about if a record wasn't
2 available at the time of the acquisition we kind of
3 wondered how it might later become available post
4 acquisition. When you are in that acquisition case and
5 you're trying to figure out what the debit adjustment
6 would be, what sort of incentive would be, you wouldn't
7 really know if you didn't have a complete analysis at
8 that point in time. We think it would be better to have
9 a complete analysis from our perspective so you could
10 sort of figure out the debit adjustment would be -- what
11 that would be, if any.

12 CHAIRMAN HALL: Okay. Other comments?

13 MS. NORTON: Yes. So also as we mentioned in
14 our comments, the requirement to go in and file a rate
15 case within 12 months after the acquisition case is
16 something that would be very challenging for us to do.

17 CHAIRMAN HALL: Right, right, and that was why
18 in the proposed rule we gave the option of 12 months or
19 as determined by the Commission in the CCN or
20 acquisition case order. Is your concern that the 12
21 months would be a default or something like that?

22 MS. NORTON: We would be concerned about being
23 required to come in in that 12 months.

24 CHAIRMAN HALL: And we struggled with that
25 concept in the drafting. And would it -- What would

1 staff's response or OPC's response be if we simply said
2 the company has to come in for a rate case as set forth
3 in the order, in the transfer or CCN order and not have
4 a 12-month deadline in there at all?

5 MR. WESTON: From staff's perspective, we
6 think that would be fine. The concern being that you
7 actually want the company to come in. So there would be
8 at the very least a Commission order requiring a rate
9 case during some period of time.

10 CHAIRMAN HALL: Does OPC have a thought on the
11 issue?

12 MR. SMITH: I think we would agree with
13 Missouri-American. We don't want Missouri-American to
14 come in and, you know, specifically just because they
15 acquire one system. Just the efficiency of resources,
16 you know, wouldn't be worth the resources. So your
17 proposed fix, I think you had said as ordered by the
18 Commission, just provided that I don't know if the
19 Commission could order in the next general rate case
20 rather than a specific time period. I'm not sure
21 Missouri-American would necessarily want to --

22 CHAIRMAN HALL: I think we would simply say in
23 the order approving the acquisition, and the acquisition
24 adjustment if one existed, we would say and
25 Missouri-American must come in for a rate case and it

1 would probably be when the -- is it three years or four
2 years for ISRS?

3 MS. NORTON: It's three years from the time we
4 put ISRS into place. So it ends up usually being three
5 and a half to four years before we come in again.

6 CHAIRMAN HALL: We're not going to require
7 Missouri-American to come in early for a rate case
8 earlier than they would otherwise. That doesn't make
9 any sense at all. There are other acquiring utilities
10 that we would want to see in pretty quickly. So nobody
11 is opposed to elimination of the 12 month as long as
12 there's something in the rule that would give the
13 Commission I guess direction or guidance that it needs
14 to set a deadline to come in for the next rate case?

15 MR. SMITH: Chairman, I'm not opposed, but the
16 conversation raised a potential other issue that OPC
17 raised about who would be the utility that would be
18 awarded this. I'm not sure if the rule has any
19 restrictions on that right now. And I don't know if
20 there needs to be. Right now the statute says a capable
21 public utility and they define that as a utility
22 basically over 8,000. It's just Missouri-American. But
23 what it does allow is if you're under 8,000 you can
24 petition to become a capable public utility.

25 CHAIRMAN HALL: Again, you're going back to

1 393.146 and I think that's an irrelevant statute myself.

2 MR. SMITH: Well, even if it's irrelevant, we
3 think there's -- we think those utilities that would
4 apply for this, and I think the purpose statement in the
5 proposed rule suggests this too, we would want them to
6 have as the purpose statement says the resources to
7 rehabilitate the acquired utility within a reasonable
8 time frame. So just --

9 CHAIRMAN HALL: I would agree with that.

10 MS. NORTON: So the next point that I wanted
11 to just touch on was in the event where there's maybe a
12 financially insolvent utility. Many of these utilities
13 have taken out a lot of debt and so their debt sometimes
14 because of the projects that they've done or the way
15 they've managed their capital projects, their debt can
16 actually be higher than the value of their system. So
17 when you look at the original cost. So we would ask
18 that if we had to pay more to pay off their debt that
19 that would be included as well like the acquisition
20 adjustment.

21 We think the rule may allow that through that
22 debt acquisition adjustment but just want to clarify
23 that that would be the kind of situation. We've seen
24 that with certain utilities that their debt is very
25 high. It may be slightly higher than the value of their

1 system.

2 CHAIRMAN HALL: So how would you specifically
3 change the wording to address that concern?

4 MS. NORTON: I'm sorry?

5 CHAIRMAN HALL: How would you change the
6 language to address that concern? Would it be in the
7 definition of debit acquisition adjustment?

8 MS. NORTON: Yeah, uh-huh.

9 CHAIRMAN HALL: Because I think my
10 understanding of the intent was to allow for that.

11 MS. NORTON: We thought that. We wanted to be
12 clear on that.

13 MR. WESTON: Chairman, staff's view is that
14 the definition (1)(A) -- or I'm sorry, (1)(C), does
15 actually include that, the excess acquisition cost over
16 depreciated original cost of the acquired system. We
17 believe that actually includes those debt costs that
18 Missouri-American referenced.

19 MS. NORTON: Okay. We just wanted to clarify
20 that.

21 CHAIRMAN HALL: Is there a reason we should
22 say including possible debt or does that --

23 MR. WESTON: Well, I don't think I would be
24 opposed to that. The only thing I'm concerned about
25 necessarily adding a specific thing like that if we

1 don't have the -- right, then you start changing what
2 excess over means without -- excess acquisition cost
3 over depreciated original cost of the acquired system,
4 for example, but not limited to debt cost. We'd have to
5 do that kind of language.

6 CHAIRMAN HALL: Okay. Does OPC have a thought
7 on that?

8 MR. SMITH: We think that language is
9 unnecessary because the rule we think is clear as
10 written and, you know, we would have to take a look at
11 specifically what it is the facts and circumstances as
12 to whether we would, of course, support or be against
13 that type of request in the actual proceeding.

14 CHAIRMAN HALL: Okay.

15 MS. NORTON: Okay. I still have a couple more
16 topics I want to touch on. Thank you for your patience.

17 CHAIRMAN HALL: No problem.

18 MS. NORTON: So in addition to looking at the
19 rate of return premium and the debt acquisition
20 adjustment, we think that again kind of closing that gap
21 between when we do the acquisition and the rate case
22 would be a great incentive for us to purchase some of
23 these nonviable systems. And in order to do that, we
24 would want to look at maybe deferred depreciation on
25 both the acquired assets and the new capital investment,

1 kind of the post acquisition capital that we put in
2 prior to the next rate case, the carrying cost on the
3 post acquisition capital at the company's pre tax cost
4 of capital and also be able to defer the operating
5 expenses for that acquired system for recovery in the
6 company's next general rate case. Basically look for
7 ways that we can kind of reduce that lag from when we
8 acquire those troubled systems until we get into that
9 next rate case.

10 We think that there are ways that we could
11 also help with the customers. So we could --

12 CHAIRMAN HALL: So on that point you're
13 essentially just arguing for additional mechanisms --

14 MS. NORTON: Yes.

15 CHAIRMAN HALL: -- other than the debit
16 acquisition adjustment and the rate of return premium?

17 MS. NORTON: Yes. Those are some additional
18 mechanisms that we think would be really helpful to
19 consider.

20 CHAIRMAN HALL: Does staff or OPC have
21 response to that request?

22 MR. WESTON: Yes.

23 MR. SMITH: Sure, OPC does. I think if such a
24 mechanism were to be considered we'd want to limit its
25 scope. For example, we wouldn't want something like

1 this to continue in perpetuity. I think whatever
2 acquisition adjustment or rate of return premium they'd
3 be looking at I think it would have to only be on the
4 rate base that's actually built to make this system
5 nonviable. I think that would need to be a reasonable
6 restriction on the request.

7 And we might also consider, you know, if --
8 there could be a situation where the cost of improving
9 the system to bring it up into compliance are really
10 large like -- I mean, to me really large is probably
11 different to Missouri-American; but I think if you got a
12 system that needed improvements in the seven or eight
13 figures, I'm not sure it would be appropriate to, you
14 know, include that much rate base. So maybe there's
15 some reasonable restriction on that. But I think the
16 rule does say on rate of return premiums, and we brought
17 this up in our comments and the associated system
18 improvement cost. So I think that probably covers
19 Missouri-American's thoughts.

20 MR. COOPER: Well, on a going forward basis
21 coming out of the next rate case, I think you're right.
22 It touches on those improvement costs. But I think the
23 point is the regulatory lag that's experienced between
24 when those assets are placed in service and that next
25 rate case.

1 MR. SMITH: And I know, Chairman, 393.146,
2 we're thinking of maybe stepping away from that. They
3 actually do have a procedure to deal with that to
4 prevent regulatory lag. They basically have the large
5 utility come in and take advantage of the small utility
6 rate case and they get a rate that incorporates those
7 improvements. So I think they're asking for something a
8 little different than that. It sounds sort of like a
9 deferral account.

10 MS. NORTON: Uh-huh.

11 MR. WESTON: Chairman, Jacob Weston for staff.
12 I think staff's view is that the kind of deferral
13 mechanisms that Ms. Norton put forward are already
14 available in some ways to be requested and they don't
15 necessarily need to be enumerated within the regulation
16 itself; that that request could happen at the time an
17 application was filed. Not to --

18 CHAIRMAN HALL: Which application?

19 MR. WESTON: The original applications
20 required for the acquisition incentive at the time of
21 the acquisition or CCN case. I think that request could
22 be made at that point in time. It doesn't necessarily
23 need to be reflected in the rule. I think there's --

24 CHAIRMAN HALL: Let me stop you for a second
25 there. I think you're right. At the same time, any of

1 these mechanisms could probably be requested legally in
2 the application. So what we're trying to do in this
3 rule is to kind of standardize the approach to
4 requesting and awarding those mechanisms. I guess my
5 larger concern with doing that in the rule is that it's
6 not in the proposed rule.

7 MR. WESTON: Right.

8 CHAIRMAN HALL: And I don't know if we can --
9 I don't know if we can add a mechanism in the final rule
10 that there's no semblance of in the proposed rule.
11 That's the legal concern I have.

12 MR. WESTON: I think that is a fair concern.

13 CHAIRMAN HALL: Any other response to that
14 additional mechanism?

15 MR. WESTON: I don't think so.

16 MS. NORTON: So that pretty much concludes
17 most of our comments. I would just like to say that
18 these systems are usually in urgent need. So anything
19 that we can do to expedite the process so it doesn't
20 take so long from the time that we bring it forward
21 until we can close on the deal would be greatly
22 appreciated. So we'd like to look for ways within the
23 groups to be able to expedite these as quickly as
24 possible. We'd appreciate your attention to that as
25 well.

1 CHAIRMAN HALL: Is there something we could do
2 within this rule to address that?

3 MR. COOPER: I suppose you could set a goal
4 within the rule. We have that sort of timing, similar
5 sort of timing feature to the small utility rate case
6 rule where the Commission rule says this is when we want
7 to conclude this case within this sort of time period.
8 I think you could do something similar to that in this
9 rule that would be helpful. Of course, those are always
10 subject to waiver in specific situations in that, but
11 that would be helpful.

12 MS. NORTON: Uh-huh.

13 CHAIRMAN HALL: All right. The concern about
14 whether or not the rate of return applies to just the
15 acquired system or the entire utility's rate base, would
16 there be a reason to give the Commission the discretion
17 within the rule as to that issue? I guess I'll ask
18 staff first.

19 MR. WESTON: Yes, Chairman. I think much
20 about the rule depends on the Commission's discretion
21 and its considered discretion in each case. I don't
22 think that there's necessarily a problem with putting
23 that language in there. I will state that staff when we
24 filed our comments we did try to clarify that, make it
25 very clear that we are intending that that rate of

1 return premium would just apply to the acquired
2 property. The reason for that is in particular about
3 trying to incent specific behavior. You're trying to
4 reward specific actions rather than a more globalized
5 reward for doing the right thing. We want you to give a
6 meritorious company the opportunity to get something
7 back for doing right. And the acquisition of a small
8 system might be honestly a drop in the bucket for a
9 company the size of Missouri-American. It might not be
10 for a different company. You want to make sure that the
11 reward is proportionate for what's being expended.

12 CHAIRMAN HALL: OPC?

13 MR. SMITH: Public counsel agrees with the
14 comments staff just made.

15 CHAIRMAN HALL: I think staff said that giving
16 the Commission the discretion between the two is okay.

17 MR. SMITH: Oh, yeah, we do not agree with
18 that.

19 CHAIRMAN HALL: I didn't think you would.

20 MR. SMITH: If the Commission had the
21 discretion to add 100 basis points to all of the rate
22 base of Missouri-American, our office would very likely
23 hire rate of return experts in these types of
24 proceedings because I don't think we want the exception
25 to become the rule. I think if you apply 100 basis

1 points across the board rather than the weighted rate
2 base that that would just not be appropriate for what
3 this rule is trying to accomplish.

4 CHAIRMAN HALL: You wouldn't argue that it's
5 never appropriate; you would just argue that for
6 Missouri-American when it purchases a \$500,000 100-rate
7 payer system it might be inappropriate to give them 100
8 point bump on their entire ROR but there could be
9 situations where you had a smaller utility purchasing an
10 even smaller utility where we should look at the entire
11 acquiring utility's rate base?

12 MR. SMITH: Yeah. I wonder if that would tie
13 in to (5) when we were talking about bringing those
14 smaller utilities in for a rate case early. If you're
15 applying a rate of return premium on all of the rate
16 base, that sort of to me starts to get into ratemaking
17 more so than maybe this rule wants to.

18 CHAIRMAN HALL: Missouri-American?

19 MR. COOPER: Certainly I think we believe that
20 it would be helpful for the rule to specify that the
21 Commission has that discretion. I think as everybody
22 said there's going to be a number of different
23 circumstances that the Commission could look at and
24 making it clear that at least that's something that the
25 Commission would consider would be helpful.

1 CHAIRMAN HALL: Okay. Let me switch gears for
2 a second. Do you think that there's any question as to
3 whether or not the Commission has authority to
4 promulgate this rule under the more general statutes --
5 where are they -- oh, 386.040 and 386.250 and 393.140?

6 MR. COOPER: I guess I always have concern
7 because I never know what the Court of Appeals is going
8 to do.

9 CHAIRMAN HALL: Yeah, we just learned that
10 today.

11 MR. COOPER: Beyond that, I don't think I have
12 as much concern about your authority to promulgate the
13 rule as I do about the issue that you specified earlier,
14 Chairman, which is how binding or not binding it's going
15 to be in the future rate case with a future Commission.
16 That's a bigger problem to me than the authority for
17 promulgating the rule itself.

18 CHAIRMAN HALL: Okay. Let me ask that --
19 direct that question to staff and then in addition to
20 that question why we included 393.146 at all.

21 MR. WESTON: Sure. I do think the Commission
22 has the authority under the general reg provisions to
23 propose and promulgate this rule. I think the authority
24 under 040 -- 386.040 and 386.250 very broadly provide
25 the Commission that discretion and that authority to do

1 that to make that legislative style regulation.

2 I think the reference to 146 was actually
3 offered by OPC at the workshop on this case.

4 CHAIRMAN HALL: Well, isn't that ironic.

5 MR. WESTON: I think the other reason to
6 reference 146 is that 146 while not being the statute
7 from which the authority for this regulation is stemming
8 forth, it does provide the public policy directive for
9 the basis behind the regulation. Now, whether or not
10 that reg needs to be cited in the rule for that purpose
11 I guess I have different thoughts on that -- conflicting
12 thoughts on that.

13 I do think there's at least clear public
14 policy stated if you take public policy best stated as a
15 statute, then public policy does suggest that the
16 acquisition of nonviable utilities is good public
17 policy. I think that's captured in the purpose
18 statement of this rule as well.

19 CHAIRMAN HALL: OPC?

20 MR. SMITH: Yeah, Mr. Weston is correct, we
21 did suggest that because that was the statute -- the
22 closest statute that we saw to this rule is why we made
23 that suggestion, and I think we share Mr. Cooper's
24 concern that, you know, if we're involved in
25 establishing rate of returns on certain amounts of rate

1 base and if we're predetermining the award of an
2 acquisition premium, I think that could be a little more
3 questionable when you depart from 393.146 and rely
4 instead on the other general ratemaking provisions.

5 MR. WESTON: Chairman, if I might just add
6 something. It is not staff's intent that reference to
7 146 limits the regulation. So we don't want there to be
8 that kind of -- We agree that the purpose is different.

9 CHAIRMAN HALL: Does staff have other
10 comments?

11 MR. WESTON: Just a couple, Chairman. I'll
12 just note that we filed our comments in this case as
13 everyone else has. The two major recommendations that
14 we have are actually language changes, one of which
15 we've talked about, the other one not as much.

16 The one that we've talked about is in reverse
17 order the second recommendation we've made which is to
18 address the concerns about ambiguity and that just
19 applying that ROR to the acquired rate base. That's the
20 change in the language. So it would just make it to the
21 acquired system, not the total rate base for the utility
22 and we've already discussed that.

23 The second recommendation is to remove
24 language that says within a reasonable period of time
25 and delete that as unnecessary. That's in (1)(A)2. The

1 reason for that is concern over argument over what is a
2 reasonable period of time in particular if there's a
3 failure to comply with an order of the Department of
4 Natural Resources or the Commission. And the concern
5 was that then you get into this guessing game of when a
6 system may become noncompliant. We think there are
7 already mechanisms in place that would provide what that
8 time period would be with the Commission either there's
9 an order identifying become compliant within so many
10 days or with the Department of Natural Resources
11 frequently companies that are interested in acquiring
12 problematic systems. I've already spoken with DNR.
13 They're already aware of particular DNR deadlines and
14 may have those systems and they already have a schedule
15 of compliance to get back into compliance with
16 Department of Natural Resources statutes and regs. We
17 think removing that reasonable period of time eliminates
18 some possible frictions, some possible ambiguity and
19 lets the purpose of that rule speak more clearly.

20 CHAIRMAN HALL: Was that in response to a
21 comment from another stakeholder?

22 MR. WESTON: I think that might have been in
23 response to comments at the workshop and we wanted to
24 make that clear.

25 CHAIRMAN HALL: Okay.

1 MR. WESTON: If I might add one more thing.
2 It's not in our filed comments but it is in kind of
3 response to the discussion we've had this morning. I
4 think OPC and yourself and the company have made an
5 interesting point that we don't want the purpose of this
6 rule to go out and acquire 30,000, 50,000 customer
7 systems. It's intended to help small systems. We think
8 that the small rate case staff assisted rules already
9 identify the 8,000 number. We think that's appropriate.
10 We also don't want necessarily it to be limited to only
11 regulated systems. There are some very small municipal
12 systems out there that would be appropriate for
13 consideration under this rule. So we just wanted to
14 make staff's viewpoint on those clear.

15 JUDGE WOODRUFF: If I can jump in with a
16 question. You mentioned small municipal systems. Would
17 this ever have application beyond the water and sewer or
18 small electrical systems that could fall under this?

19 MR. WESTON: This rule does not contemplate
20 that, no.

21 MR. SMITH: Judge, to your point I think the
22 title does say nonviable utilities and then defines
23 nonviable utility but then in the purpose statement it
24 says water or sewer utilities. So maybe there's a -- if
25 it is going to be just for water or sewer, maybe that

1 should be somewhere in the rule itself.

2 JUDGE WOODRUFF: Asking broader, should it
3 apply to small electrical? Would it ever be appropriate
4 for it to?

5 MR. WESTON: I don't know that staff -- That's
6 a good question, Judge. I don't know that there are
7 enough small electric utilities that staff actually
8 regulates. I don't know that we have any small electric
9 utilities. I think the only potential --

10 JUDGE WOODRUFF: I'm thinking of small
11 municipal. Are there -- I don't know. Natural gas for
12 that matter.

13 MR. WESTON: Right. There are some natural
14 gas systems that are considered small, steam. I don't
15 think staff's intent was ever for this to go beyond the
16 immediate issue of failing small water and sewer that we
17 see with some regularity.

18 JUDGE WOODRUFF: Anything else from staff?

19 MR. WESTON: I have nothing further, Your
20 Honor.

21 MR. WOODRUFF: Anyone else in the room wishing
22 to make any further comments? All right. Then we are
23 adjourned. Thank you.

24 (Off the record.)
25

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